71.

SUPREME COURT OF THE UNITED STATES.

No. 122.

JOSEPH C. PALMER, CHARLES W. COOK, BETHUEL PHELPS, AND DEXTER R. WRIGHT, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Petition	3	3
Deposition of Benito Diaz	5	4
Do. Pio Pico	9	6
Do. Benito Diaz	10	8
Do. José M. Moreno	12	10
Do. John J. Vioget	13	11
Do. Jona. D. Stevenson	15	12
Do. James Alex. Forbes	17	14
Do. James C. Crane	18	15
Do. John H. Watson	20	17
Petition of Benito Diaz	21	18
Translation of title	23	19
Exhibit A	24	20
Original grant, (copy)	26	22
"B. P. L." Exhibit to depo. of J. D. Stevenson, March 13, 1855	27	23
"A. P. L." Do. " " "	28	24
Doc. H. J. T., No. 2, annex. to depo. of Benito Diaz	29	24
Translation of Doc. "H. J. T.," No. 2, annexed to depo. of B. Diaz	31	26
Release	32	27
Stipulation	32	28
Deposition of V. P. Gomez	33	28
Receipt of the att'y for the claimant for original papers	34	28
Letter of V. E. Howard	35	29
Map	35	30
1 S. D. K	36	30
2 and 3 S. D. K	37	30

	Original.	Print.
Opinion by Com'r Farwell, decree, and order	39	31
Secretary's certificate	40	32
Notice of intention to prosecute appeal	41	33
Petition for review	41	33
Answer	43	35
Order fixing time of trial	43	33
Deposition of Benito Diaz	43	35
Exhibit No. 1, J. E. G., attached to the deposition of B. Diaz	48	39
Translation of Exhibit No. 1, J. E. G., attached to the deposition of Benito Diaz	49	40
Deposition of Luis Arenas	49	40
Do. Cayetano Arenas	51	42
Do. Manuel Dutra	55	45
Do. Gabriel de la Torré	58	47
Do. Bernardino Soto	60	49
Do. J. L. Luco	64	52
Do. Juan M. Luco	66	54
Do. T. A. Mudge	68	55
Do. Frederick Billings	69	56
Exhibit "A *a*"	70	57
" "B"	72	58
" "B"	75	60
Expedeinte	78	62
Translation of expediente	80	64
Certificate, order, and stipulation	82	66
Order granting dist. attorney further time	84	67
Order fixing time for trial	85	67
Opinion on motion to set case for a hearing, by the hon'ble Ogden Hoffman, U. S. dist. judge	86	68
Order granting dist. att'y further time, and fixing time of trial	89	69
Motion	90	70
Opinion fixing cause for argument, delivered by the hon'ble Ogden Hoffman, U. S. dist. judge	91	70
Order refusing continuance and fixing time of trial	93½	72
Order postponing hearing	94	73
Order submitting cause, with leave to district attorney to file briefs	95	73
Decree rejecting claim	96	74
Order granting appeal	97	74
Clerk's certificate	98	75

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this seventeenth day of January, anno domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Joseph C. Palmer et al. for the place named "Punta de Lobos" was presented and ordered to be filed and docketed with No. 515, and is as follows, to wit:

(Vide page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *April 2d*, 1853.

In case No. 515, Joseph C. Palmer et al., for the place named "Punta de Lobos," the petition of Benito Dias, a witness in behalf of the claimants, taken before commissioner Harry J. Thornton, with documents marked "H. J. T.," No. 1, 2, annexed thereto, was filed.

(Vide page 7 of this transcript.)

In the same case the counsel for the claimants filed the following release, to wit:

(Vide page 38 of this transcript.)

SAN FRANCISCO, *July* 21, 1854.

In the same case the deposition of Pio Pico, a witness in behalf of the claimants, taken before commissioner G. T. Burrill, was filed.

(Vide page 11 of this transcript.)

SAN FRANCISCO, *August* 8, 1854.

In the same case the deposition of Benito Diaz, a witness in behalf of the claimants, taken before commissioner Peter Lott, was filed.

(Vide page 15 of this transcript.)

SAN FRANCISCO, *December* 5, 1854.

Case No. 515 was ordered to be placed at the foot of the 3d class cases on the trial docket.

SAN FRANCISCO, *December* 8, 1854.

In the same case the deposition of José Matias Moreno, a witness in behalf of the claimants, taken before commissioner Peter Lott, was filed.

(Vide page 17 of this transcript.)

SAN FRANCISCO, *February* 19, 1855.

In the same case the deposition of John H. Watson, a witness in behalf of the United States, taken before commissioner Peter Lott, was filed.

(Vide page 27 of this transcript.)

SAN FRANCISCO, *March* 9, 1855.

In the same case the deposition of John J. Vioget, a witness in behalf of the United States, taken before commissioner Peter Lott, was filed.

(Vide page 18 of this transcript.)

SAN FRANCISCO, *March* 13, 1855.

In the same case the deposition of Jonathan D. Stevenson, a witness in behalf of the United States, taken before commissioner Peter Lott, with documents marked "A. P. L." and "B. P. L.," annexed thereto, was filed.

(Vide page 19, of this transcript.)

Case No. 515 was submitted without argument, and taken under advisement by the board.

SAN FRANCISCO, *March* 20, 1855.

In the same case the deposition of James Alexander Forbes, a witness in behalf of the United States, taken before commissioner Peter Lott, was filed in accordance with the stipulation annexed thereto, *was filed.*

(Vide page 22 of this transcript.)

SAN FRANCISCO, *March 27th*, 1855.

In the same case the deposition of James C. Crane, a witness in behalf of the United States, taken before commissioner Peter Lott, was filed in accordance with the stipulation annexed thereto.

(Vide page 24 of this transcript.)

SAN FRANCISCO, *May 17th*, 1855.

In the same case the deposition of Vicente P. Gomez, a witness

in behalf of the United States, taken before commissioner S. B. Farwell, was filed—

(Vide page 49 of this transcript.)

In accordance with the following stipulation, to wit:

(Vide page 47 of this transcript.)

SAN FRANCISCO, *August 14th*, 1855.

In the same case commissioner S. B. Farwell delivered the opinion of the board, rejecting the claim.

(Vide page 59 of this transcript.)

And the following order was made, to wit:

(Vide page 61 of this transcript.)

Petition.

Before the commissioners to settle private land claims in California:

Joseph C. Palmer, Charles W. Cook, Bethuel Phelps, and Dexter R. Wright give notice that they claim a tract of land in said State, by virtue of a right and title derived from the Mexican government.

The tract so claimed is of about two leagues in extent, situated in the county of San Francisco, and known as the rancho "Punta de Lobos," or Wolf's Point, bounded northwardly by the sea which flows to the point of San Francisco, southerly by the hill known as the hill of the Laguna Honda, in the rear of the Mission of San Francisco, or Dolores, easterly by the High hills, and westerly with the "Punta de Lobos," or Wolf's Point," from which said tract takes its name.

On the 3d of April, 1845, Benito Diaz, a citizen of the Mexican republic, petitioned for said land to be granted to him, presenting his petiiion according to law to the then Governor of California, Don Pio Pico, which said petition said Governor referred to the nearest public functionaries, to wit, the justice of the peace of the settlement of San Francisco, or Yerba Buena, and the commandant of the Presidio of San Francisco, to report upon the same.

In pursuance of said reference, said officers made their respective reports, declaring the said lands to be vacant and in condition to be granted, with the exception of two small points, the one occupied by the ruins of the old fortification, and the other by the remains of said San Francisco; and on the 25th day of June, 1846, said Governor granted said lands accordingly to Benito Dias.

On the 19th September, 1846, said grantee sold and conveyed

the same to Thomas O. Larkin, who afterwards, on the 19th September, 1849, sold and conveyed the same to said Dexter R. Wright; and it has come to present claimants through sundry mesne conveyances, which will be exhibited and proved according to law.

And the said claimants further show that said Diaz had actual possession of said land, but was not able to obtain judicial possession of it under the former government of California, in consequence of the occupation of the country by the military forces of the United States soon after the issuance of said grant.

The originals of said petition of said Dias, with the processes thereupon taken, as hereinbefore shown, exists in the archives of the former government of California, and a certified copy of the same is herewith filed, marked exhibit "A," and a copy of said original grant, with a translation of the same, is herewith presented, marked exhibit "B," and the original will be produced and proved according to law, as likewise said mesne conveyances. The claimants are not aware of any conflicting claim or title to said land or any part of it.

JONES, TOMPKINS, & STRODE,
Att'ys for Claimants.

Filed in office January 17th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in vol. 1 of Petitions, on pages 483, 484.

GEO. FISHER, *Sec'y.*

Deposition of Benito Diaz.

SAN FRANCISCO, *April 2d*, 1853.

On this day, before Commissioner Henry J. Thornton, came Benito Diaz, a witness on behalf of the claimants, Joseph C. Palmer et al., petition No. 515, and was duly sworn; his evidence being translated by the secretary.

Questions by claimants.

1st question. What is your name, age, and place of residence?

Ans. My name is Benito Diaz, my age is thirty-nine years, and I live in Monterey, Cal.

2d question. Are you acquainted with the place called "Punta de Lobas" claimed in this case?

Ans. I am acquainted with it.

3d question. Do you or not *known* of a petition being presented to the government for this place? If yea, when and by whom was it presented?

Ans. In the year 1845 I made a petition for this place.

4th question. Do you or not know whether any decree for information was made by the governor; and if you do, state what you know in relation to that subject?

Ans. There was an investigation made by the order of the governor, by the military commandant, and the judge of San Francisco.

5th question. Are you acquainted with the handwriting of Governor Pio Pico and of José Matias Moreno? If yea, look upon the document now shown you, marked exhibit "No. 1," and filed herewith, and state whether the signatures of those persons where they occur in or upon the said document are their genuine signatures.

Ans. I am acquainted with the handwriting of Pio Pico and of José Matias Moreno. I have examined the document exhibited, and have no doubt, having seen them write, that these signatures where they appear on the same are genuine.

6th question. Were you present when this document was made or not; and when and how long after its date did you first see it?

Ans. I was not present when it was executed. About two or three weeks after it was executed, I received it in Monterey.

7th question. Was judicial possession given you of the land; and if not, for what cause did you not procure it?

Ans. It never was given to me, because shortly after the grant the American forces took possession of San Francisco.

8th question. Look upon the document now here shown you, marked "Exhibit No 2" to this deposition, and say whether your signature thereto is your own genuine signature?

Ans. I have examined the said document, and acknowledge that my signature thereto is genuine.

Questions by U. S. law agent.

1st question. In whose handwriting is the document "Exhibit No. 1" hereto and above referred to?

Ans. It is my handwriting.

2d question. Where were you when you made it, and when did you write it?

Ans. I wrote it at San Francisco on the 20th or 21st June, 1846. I wrote it in consequence of a letter from Bandini, secretary of the government, stating to the witness that he must prepare his papers, and send them down in form immediately, because the country was in a critical state. I sent them down by a special courier accordingly.

4th question. Did you write out the grant or title before you had instructions or authority from the government to do so, or without any such authority?

Ans. I wrote it out after I was informed, as before stated, by Bandini, who was then secretary of the government, to prepare and make out my papers. This information was given on account of my connection with Bandini. I had no other authority or instructions about it.

the same to Thomas O. Larkin, who afterwards, on the 19th September, 1849, sold and conveyed the same to said Dexter R. Wright; and it has come to present claimants through sundry mesne conveyances, which will be exhibited and proved according to law.

And the said claimants further show that said Diaz had actual possession of said land, but was not able to obtain judicial possession of it under the former government of California, in consequence of the occupation of the country by the military forces of the United States soon after the issuance of said grant.

The originals of said petition of said Dias, with the processes thereupon taken, as hereinbefore shown, exists in the archives of the former government of California, and a certified copy of the same is herewith filed, marked exhibit "A," and a copy of said original grant, with a translation of the same, is herewith presented, marked exhibit "B," and the original will be produced and proved according to law, as likewise said mesne conveyances. The claimants are not aware of any conflicting claim or title to said land or any part of it.

JONES, TOMPKINS, & STRODE,
Att'ys for Claimants.

Filed in office January 17th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in vol. 1 of Petitions, on pages 483, 484.

GEO. FISHER, *Sec'y.*

Deposition of Benito Diaz.

SAN FRANCISCO, *April 2d*, 1853.

On this day, before Commissioner Henry J. Thornton, came Benito Diaz, a witness on behalf of the claimants, Joseph C. Palmer et al., petition No. 515, and was duly sworn; his evidence being translated by the secretary.

Questions by claimants.

1st question. What is your name, age, and place of residence?

Ans. My name is Benito Diaz, my age is thirty-nine years, and I live in Monterey, Cal.

2d question. Are you acquainted with the place called "Punta de Lobas" claimed in this case?

Ans. I am acquainted with it.

3d question. Do you or not *known* of a petition being presented to the government for this place? If yea, when and by whom was it presented?

Ans. In the year 1845 I made a petition for this place.

4th question. Do you or not know whether any decree for information was made by the governor; and if you do, state what you know in relation to that subject?

Ans. There was an investigation made by the order of the governor, by the military commandant, and the judge of San Francisco.

5th question. Are you acquainted with the handwriting of Governor Pio Pico and of José Matias Moreno? If yea, look upon the document now shown you, marked exhibit "No. 1," and filed herewith, and state whether the signatures of those persons where they occur in or upon the said document are their genuine signatures.

Ans. I am acquainted with the handwriting of Pio Pico and of José Matias Moreno. I have examined the document exhibited, and have no doubt, having seen them write, that these signatures where they appear on the same are genuine.

6th question. Were you present when this document was made or not; and when and how long after its date did you first see it?

Ans. I was not present when it was executed. About two or three weeks after it was executed, I received it in Monterey.

7th question. Was judicial possession given you of the land; and if not, for what cause did you not procure it?

Ans. It never was given to me, because shortly after the grant the American forces took possession of San Francisco.

8th question. Look upon the document now here shown you, marked "Exhibit No 2" to this deposition, and say whether your signature thereto is your own genuine signature?

Ans. I have examined the said document, and acknowledge that my signature thereto is genuine.

Questions by U. S. law agent.

1st question. In whose handwriting is the document "Exhibit No. 1" hereto and above referred to?

Ans. It is my handwriting.

2d question. Where were you when you made it, and when did you write it?

Ans. I wrote it at San Francisco on the 20th or 21st June, 1846. I wrote it in consequence of a letter from Bandini, secretary of the government, stating to the witness that he must prepare his papers, and send them down in form immediately, because the country was in a critical state. I sent them down by a special courier accordingly.

4th question. Did you write out the grant or title before you had instructions or authority from the government to do so, or without any such authority?

Ans. I wrote it out after I was informed, as before stated, by Bandini, who was then secretary of the government, to prepare and make out my papers. This information was given on account of my connection with Bandini. I had no other authority or instructions about it.

5th question. Do you know when and where Pio Pico signed the document above exhibited by the grant in this case?

Ans. I do not know positively where he was when he signed it. but from information of my courier I understood that he signed it on the road, either at Santa Buena Ventura or Santa Barbara.

6th question. How do you know that Bandini was at that time the secretary of the government?

Ans. I know it, because it was notorious that he was so, and because of his letters to me above mentioned.

7th question. Did he mention in those letters that he was secretary of the government?

Ans. He did not; his letters were private letters.

8th question. Where did you see Pio Pico first after the making of the grant?

Ans. In the month of July or August, 1846, on the road at Santa Marguerita.

9th question. Did you have any conversation with Pio Pico when you met him, as just stated, on the subject of this grant?

Ans. I did not have any conversation with him on the subject. I only saw him a few moments.

BENITO DIAZ.

U. S. law agent present.

Sworn and subscribed before me this 2d of April, 1853.

HENRY J. THORNTON,
Commissioner.

Filed in office April 2d, 1853.

GEORGE FISHER, *Secretary.*

Recorded in Ev. B., vol. 2d, page 700.

GEORGE FISHER, *Secretary.*

Depo. of Pio Pico.

Pio Pico, vocal decerno de la Asamblea Departamental y Gobernador Constitucional de las Californias.

[SELLO.] Por cuanto D. Benito Dias ha pretendido para su beneficio personal y el de su familia el terreno conocido bajo el nombre de "Punta de Lobos," cito en el puerto de S. Francisco, practicadas previamente las averiguaciones conservientes usando de las facultades que me son conferidas a nombre de las nacion Mejicana he venido por decreto de este dia en consedule el espresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la exma. Asamblea Departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin prejudicar las travecias, caminos y servidumbres, lo disputara libre y escluramente destinandolo al uso ó cultivo que mas le acomode.

2a. Solicitara del Juez respectivo le de posecion judicial en virtud de este despacho, por el cual se demarcaran los linderos con las mojoneras necesarias.

3a. El terreno de que se hace donacion es de la estencion de dos sitios de ganado mayor poco mas ó menos que comprende desde la laguna de la loma alta hasta la punta de lobos, y el mismo que demuestra el deseño que obra en el espediente. El juez que diere la posecion ló hara medir conforme á ordinanza.

En consequencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo, y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de Los Angeles a veinte y cinco de Junio de mil ochocientos cuarenta y seis, en este papel commun por falta del sellado.

PIO PICO.

JOSE MATIAS MORENO, *Srio. int.*

Queda tomada razon de este titulo en el libro correspondiente.

MORENO.

OFFICE OF THE COMMISSIONER, G. THOMPSON BURRILL,
AT LOS ANGELES, CALIFORNIA.

Before me, G. Thompson Burrill, commissioner duly qualified for the taking of testimony to be used before the board of commissioners to ascertain and settle the private land claims in the State of California, personally appeared Pio Pico, a witness in behalf of Joseph C. Palmer et al., claimants for the land named "Punta de Lobos," numbered on the docket of the said board with No. 515, who upon oath declareth and saith as follows:

Question asked by counsel for claimants.

Question No. 1. What is your name, age, and place of residence?

Answer. My name is Pio Pico. I am fifty-three years of age, and I reside in the county of Los Angeles.

Question No. 2. What civil office did you hold in California in the year 1846?

Answer. I was governor of the department.

Question No. 3. Who was secretary of the government in the month of June, 1846?

Answer. José Matias Moreno was acting secretary.

Question No. 4. You are here shown exhibit marked "A No. 1, G. T. B.," and are asked if your signature and the signature of

José Matias Moreno are genuine thereto annexed, and was made for the purpose therein mentioned?

Answer. I believe them to be genuine.

PIO PICO.

Sworn to and subscribed.

I hereby certify that C. E. Thorn, esq., was present at the time that the foregoing testimony was taken, acting for, on behalf of, and by authority of J. H. McKune, esqr., U. S. law agent.

Los Angeles, July 5th, 1854.

THOMPSON BURRILL,
Commissioner.

Filed in office July 21, 1854.

GEO. FISHER, *Sec'y.*

Deposition of Benito Diaz.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *August 7th*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Benito Diaz, a witness on behalf of the claimants, Joseph C. Palmer et al., in case No. 515 of the docket of said board; and said witness being duly sworn, deposed in Spanish, which was interpreted by the interpreter to said board as follows:

The U. S. associate law agent was present.

Questions by claimants' counsel.

1st question. What is your name, age, and place of residence?

Ans. My name is Benito Diaz, my age 40 years, my residence Monterey county, California.

2d question. Are you acquainted with the rancho called "Punta de lobos?" If yea, state how long you have known it; and if it has been occupied, all you know of its occupation; by whom, when, and in what manner it has been occupied?

Ans. I am acquainted with said rancho; the first I knew of its occupation, I myself occupied it with my family. I built a small house for the servants, and repaired two houses which were already there for the accommodation of myself and family. I built a corral, and had some oxen and cows and horses on the place. I had a small garden in the same year (1845) enclosed and planted. I thus remained till the beginning of 1846.

I was employed in the custom-house at Monterey, and was then required to go there on business as such employee, and was there but a short time when the war broke out, and I did not return to take possession of the place. I took my family with me when I

went to Monterey. I am not certain of the time precisely, but I think it was in February or March, 1846. In June of that year I came back myself to the rancho to get my horses and other stock off of the place.

3d question. Did you continue in the employment of the Mexican government during the war?

Ans. I did.

4th question. Are you acquainted with the signatures of Pio Pico and José Matias Moreno? If yea, state your means of knowledge. If yea, look at the document now shown to you marked "Doc. H. J. S. No. 1," annexed to deposition of Benito Diaz taken before Com'r Henry J. Thornton, and filed in this case; and state whether the names of said Pio Pico and José Matias Moreno therein subscribed are their genuine signatures?

Ans. I am acquainted with the handwriting and signatures of said Pio Pico and José Matias Moreno, having frequently seen them both write, and these are respectively their genuine signatures to this paper.

Cross-examined by U. S. asst. law agent.

1st question. How did you happen to occupy said rancho?

Ans. I occupied it, because I had petitioned the government for it, and was sure of getting it.

2d question. Was there ever any judicial possession given of said rancho, or any approval of the Departmental Assembly?

Ans. I know of no judicial possession being given, or of any approval of the Departmental Assembly in this case.

3d question. After you removed your horses and stock, and abandoned the place, by whom, if any person, was the place occupied, and when?

Ans. I did not go back, and had no personal knowledge of its subsequent occupation.

Re-examined by claimants' counsel.

1st question. Was the garden planted in 1846?

Ans. It was not when I was there.

BENITO DIAZ.

Subscribed and sworn to on the 7th day August, A. D. 1854.

PETER LOTT,
Commissioner.

Filed in office August 8th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 5, page 260.

GEO. FISHER, *Sec'y.*

Deposition of José M. Moreno.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *December 7th*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, José M. Moreno, a witness on behalf of the claimants, Joseph C. Palmer et al., in case No. 515 on the docket of said board; and said witness being sworn, deposed in Spanish, which was translated by the interpreter to said board as follows:

The U. S. associate law agent is present.

Questions by Mr. Howard for claimants.

1st question. What is your name, age, and place of residence?

Ans. My name is José Matias Moreno, my age 36 years, my residence San Diego, California.

2d question. State what office you held under the Mexican government in California in 1846.

Ans. I was secretary of the state for the Departmental Government of the Californias.

3d question. Look at the document now shown you, marked "A. P. L.," as an exhibit to this deposition, purporting to be an original grant heretofore filed in this case, and state what you know respecting the execution, the signatures, and the delivery of said grant?

Ans. I recollect this document. I saw it on the 25th June, 1846, when I signed it. This is my signature as secretary ad interim, and also my signature to the certificate of registry, and I saw Pio Pico sign it as governor. This is his genuine signature. I think Benito Diaz wrote the body of the grant himself. After the grant was completed, I delivered it to the agent of Benito Diaz on the road from Los Angeles to Santa Barbara. The agent to whom I delivered it, according to my recollection, was Eulogio Celiz.

JOSE MATIAS MORENO.

Subscribed and sworn to before me on this 7th day of December, A. D. 1854.

PETER LOTT, *Commissioner, &c.*

Filed in office December 8th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, page 54.

GEO. FISHER, *Sec'y.*

Deposition of John J. Vioget.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *March 8th*, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, John J. Vioget, a witness on behalf of the U. S. in case No. 515, wherein Joseph C. Palmer et al. are claimants; and said witness being sworn, deposed as follows:

Mr. Howard appears for claimants.

Questions by U. S. associate law agent.

1st question. What is your name, age, and residence?

Ans. My name is John J. Vioget, age 55 years, my residence San Francisco county, California.

2d question. How long and where have you lived in California?

Ans. I have lived in California since 1837, principally in San Francisco.

3d question. Do you know the lands embraced within the following boundaries, to wit: northerly by the sea which flows to the port of San Francisco; southerly by the hill known as the hill of the Laguna Honda, in the rear of the mission of San Francisco or Dolores; easterly by the high hills, and westerly with the "Punta de Lobos," or Wolf's Point, from which said tract takes its name?

Ans. Yes. I know the lands within those boundaries.

3d question. What knowledge have you of the lands? did you know them well, and did you know of them ever having been occupied or cultivated prior to July, 1846?

Ans. I frequently rode over said lands on pleasure excursions. I never saw any occupation or cultivation of the lands prior to July, 1846.

4th question. Do you know Benito Diaz, or did you ever know of his having any claim to said land?

Ans. I know Benito Diaz. I never knew of his having any claim to these lands.

JOHN J. VIOGET.

Subscribed and sworn to before me on this 8th day of March, A. D. 1855.

PETER LOTT, *Commissioner, &c., &c.*

Filed in office March 9th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 551.

GEO. FISHER, *Sec'y.*

Deposition of Jona. D. Stephenson.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *March 13th*, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Jonathan D. Stephenson, a witness on behalf of the United States, in case No. 515 on the docket of said board, wherein Joseph C. Palmer and others are claimants; and said witness being duly sworn, deposed as follows:

Mr. Howard is present for claimants.

Questions by U. S. law agent.

1st question. What is your name, age, and residence?

Ans. My name is Jonathan D. Stephenson, my age 55 years, my residence San Francisco, California.

2d question. Look at the papers now shown you, marked "A. P. L." and "B. P. L.," respectively, as exhibited herein, purporting to be copies of a correspondence between you and H. W. Halleck, and state whether you recollect such correspondence, and what led to it?

(2d question objected to by claimants' counsel.)

Ans. Yes. I recollect the correspondence very well, and I think this is a copy of it.

The inducement to this correspondence was a letter addressed to me by Capt. Halleck, as secretary of state, requesting information respecting the whereabouts of Pio Pico, and also requesting me to ascertain whether he had made certain grants of land while he was at Los Angeles, which he was represented to have made.

3d question. State what information you enclosed to said Halleck with said letter; how it was understood that Pico was not at Los Angeles after June 17th, 1846. State also whether you have examined the action of the former government of California, with a view to ascertain where Pico was at that time; if yea, with what results.

(3d question objected to by claimants' counsel.)

Ans. I enclosed to Capt. Halleck with that letter a list of grants which I understood from Abel Stearns and other residents of Los Angeles were signed by Pio Pico the night previous to his leaving Los Angeles for Mexico, about the 8th of August, 1846.

Abel Stearns and others who were officials about Los Angeles, and had been connected with the Mexican authority previous to my writing that letter, and in the early part of the summer of 1847, at Los Angeles, informed me that Pio Pico was in and about Santa Barbara from about the middle of June to the middle or latter part of July, 1846; that he was there for the purpose of raising

troops as governor to resist General Castro, who was reported to be marching south to attack Pico. In the fall of 1848, when I was in Monterey, Capt. Halleck showed me letters which were in the archives in his keeping as secretary of state, which went to show that Pico was at Santa Barbara at the time I have mentioned, and that his absence from Los Angeles corresponded with the time I have stated.

These papers were of an official character, connected in some way with Pico's actions at that time as governor. I do not now recollect the precise purport of them; they were referred to at the time by Mr. Halleck as confirmatory of my accuracy of information I had given him in the letters. This was the only examination I recollect to have made of the archives upon this subject.

4th question. Where did Benito Diaz live in 1846 and 1847? State whether he had any building or improvements on the land claimed in this case when you knew him.

Ans. I first knew Benito Diaz in March or April, 1849, at Monterey, and he then informed me that he lived in "Yerba Buena" in 1846, and just before the Americans took possession of the country; that he was collecting materials for building a house here, and became alarmed about the time the Americans came, and fled for Mexico or the lower country, leaving his abodes and building materials on the ground. He never told me he had any house or improvements on the land claimed in this case, and I do not think he had any.

5th question. State whether or not this claim comprehends the presidio and present government reserve, and lands reserved by Mexico as a military post.

(5th question objected to by claimants' counsel.)

Ans. I know nothing about it, except from common report, and in this way I have always understood that it did embrace such reserves.

JONATHAN D. STEPHENSON.

Subscribed and sworn to before me on the 13th March, A. D. 1855.

PETER LOTT, *Commissioner.*

Filed in office March 13th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 573.

GEO. FISHER, *Sec'y.*

Deposition of James Alex. Forbes.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *March 20th*, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, James Alex. Forbes, a witness on bahalf of the United States, in case No. 515 on the docket of said board, wherein Joseph C. Palmer et al. are claimants; and said witness being sworn, deposed as follows:

Mr. Howard is present as counsel for claimants.

Questions by U. S. law agent.

1st question. What is your name, age, and residence?

Answer. My names is James A. Forbes, age 50 years, residence Santa Clara, California.

2d question. Do you know where Pio Pico, the last Mexican governor of California, was from the 17th June, 1846, to the first of August, in the same year? If yea, state where he was, and how you know it.

Ans. I know that on or about the 17th June, 1846, he left Los Angeles for Santa Barbara, and I saw him there up to July 3d, 1846; then I left there for San Francisco, leaving him there. I know this, because I saw him and had conversation with him at those points at the times mentioned.

JAMES ALEX. FORBES.

Subscribed and sworn to before me on this 20th day March, A. D. 1855.

PETER LOTT, *Commissioner.*

I admit the foregoing deposition in evidence to have the same force and effect as though taken, filed, and submitted as evidence at the time the case was submitted.

March 20th, 1855.

D. E. HOWARD,
Attorney for Claimants.

Filed in office March 20th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 633.

GEO. FISHER, *Sec'y.*

Deposition of Jas. C. Crane.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *March 26th*, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, James C. Crane, a witness in behalf of the United States, in case No. 515 on the docket of said board, wherein Joseph C. Palmer et al. are claimants; and said witness being duly sworn, deposed as follows:

Mr. Howard appears for claimants.

Questions by U. S. law agent.

1st question. What is your name, age, and place of residence?

Ans. My name is James C. Crane, my age 48 years, and my residence Marin county, California.

2d question. Are you acquainted with Benito Diaz, the original grantee in this case? If yea, state how long you have known him, and what has been your intimacy with him.

Ans. I am acquainted with the said Benito Diaz, and have known him ever since 1846. We have been very intimate with each other, so much so, that I have done business for him on various occasions as *is* interpreter and agent.

3d question. Did you ever hear him say anything about a grant of land called "Punta de Lobos?" If yea, state when you first heard from him that he had such a grant.

Ans. I have heard him say that he had such a grant; and I think he told me this in 1847, and said that he had sold it.

4th question. Did you ever learn from him the nature of said grant, where it was actually made out and signed? If yea, state generally what he told you about it, touching its validity or invalidity.

(4th question objected to by Mr. Howard.)

Answer. Don Benito Diaz told me that after the Americans took Monterey, he went below, and while there he made out the said grant in his own handwriting, and that in order to make it valid he dated it back in the month of June.

5th question. Where did Benito Diaz reside, and at what place did he build a house in 1846?

Ans. In the latter part of 1846, when I first became acquainted with him, he lived in Monterey; but he afterwards told me that in May and June of that year, he was collector of the customs here at San Francisco, and had lived here during those months, and showed me where he built a house on Jackson street, between Kearney and Montgomery streets, where the international hotel

now stands. This conversation was in the winter of 1850-1, or in the spring of the latter year.

Cross-examined by Mr. Howard for claimants.

1st question. Did you tell Bethuel Phelps that you would testify in favor of this claim in this case if he would give you $200?

Ans. I did not. I never had any conversation with him about my giving testimony in this case.

(The witness here called for the question to be repeated; the question was then repeated to him as before asked, aside from the above-written interrogatory, in the following words:)

2d question. Had you ever any conversation with said Phelps upon the subject of your giving testimony in this case?

Ans. I had. I gave the latter clause of the above written answer in the way it is written, because when the question was asked I thought it was intended to connect my answer with the first clause, and I never had any conversation with him of the import suggested in the 1st question on cross-examination.

3d question. Have you never said to Phelps or others that you could give important testimony in favor of his claim?

Ans. No; I never did say that I could only by hearsay.

4th question. Do you claim any interest in any of the land embraced within the limits of this grant?

Ans. None whatever.

JAMES C. CRANE.

Subscribed and sworn to before me this 26th day of March, A. D. 1855.

PETER LOTT, *Commissioner.*

Filed in office March 27th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, page 644.

GEO. FISHER, *Sec'y.*

It is hereby stipulated and agreed by and between the parties, in case No. 515, before the U. S. board of land commissioners, Joseph C. Palmer and others, claimants, that the annexed deposition this day taken may be read in evidence with the same force and effect as though duly taken and filed before the case had been submitted.

J. H. McKUNE,
U. S. Law Agent.

V. E. HOWARD.

Deposition of John H. Watson.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *February* 16*th*, 1855.

This day came and was sworn before Commissioner Peter Lott, John H. Watson on behalf of the United States, in case No. 515 on the docket of the land commissioner, wherein Joseph C. Palmer and others are claimants; said witness deposed as follows:

Mr. Howard appeared for claimants.

Questions by U. S. associate law agent.

1st question. What is your name, age, and residence?

Ans. My name is John H. Watson, my age 38 years, my residence Santa Cruz county, California.

2d question. How long have you resided in California, and at what point?

Ans. I have lived in California since October, 1849. I have been principally in Santa Clara and Santa Cruz counties.

3d question. Do you know a certain Benito Diaz? and if yea, how long have you known him?

Ans. I do know him. I have known him since April, 1850.

4th question. Did you ever know of a claim for the land called "Punta de Lobos," in San Francisco county? If yea, when and from whom did you first hear of it?

Ans. I heard of said claim in the spring of 1851 from Benito Diaz; that was the first I heard of it.

5th question. Did you ever have any business transactions for the purchase of land with said Benito Diaz? and if yea, state all the circumstances which occurred between you relative to that transaction?

Ans. I had such conversation with him. Charles Clayton, Joshua Rodman, and myself purchased the interest of Benito Diaz in the Santa Clara fruit orchard in 1851. In the conversation we had at the mission of Santa Clara, said Diaz remarked that a good many frauds had been practised upon the people of California; that among those frauds was the granting of the mission of San José and of the land called "Punta de Lobos," which he represented to be claimed by Thomas O. Larkin; that he knew, of his own knowledge, that both the grants were made since the hoisting of the American flag at Monterey.

That one, if not both, of these titles were written by one Cayetano Arenas, son of Luis Arenas, then resident of Stockton. I had a conversation about a year afterwards with said Diaz, in which he stated substantially about the same things. Said Diaz, in the former conversation I have mentioned, spoke of the title to the orchard of Santa Clara, and represented it to be good.

JOHN H. WATSON.

Subscribed and sworn to before me on this 16th day February, 1855.

PETER LOTT, *Commissioner.*

Filed in office February 19th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 427.

GEO. FISHER, *Sec'y.*

Petition of Benito Diaz.

Stamp of the fourth class, two reales, provisionally authorized by the maritime custom-house of the port of Monterey, in the Department of the Californias, for the years eighteen hundred and forty-four and eighteen hundred and forty-five.

[CUSTOM-HOUSE SEAL.]

To his excellency the Governor:

Benito Diaz, a native of California, and resident of San Francisco, in the form which may have most force in law, and with all proper respect, represents to your excellency, that being the owner of a number of head of cattle, and not having any farm whereon to place them, in order that they may increase, and there being a tract of waste land within the jurisdiction of San Francisco, known by the name of "Wolf's Point," bounded on the north by the sea, which runs into the port of San Francisco; on the south by the ridge of hills at the rear of the mission of San Francisco, known as the Hills of the Deep Lake; on the east by the high grounds, and on the west by Wolf's Point, all of which will include two farms for large cattle, a little more or less. It is to be observed that the ruins of the barracks of San Francisco, and also the fort, both of which exist within the aforesaid farms, are not included in this petition, (unless the government should wish to make me a present of said ruins,) and in that case I would oblige myself to erect a house in the town of San Francisco suitable for the military commandant, which house shall be twenty-five varas long by six varas wide.

Therefore I petition that your excellency will be pleased to consider my solicitation, and concede me the land which I petition for, all of which I hope for, from the well-known kindness of your excellency, and by which I shall be benefited. Swearing what may be necessary, &c.

Yerba Buena, April 3d, 1845.

(Signed) BENITO DIAZ.

(Marginal Decree.)

ANGELES, 24*th May*, 1845.

Let it be sent to the proper judge for information, and it is ex-

pected that the military commandant shall also state what may be convenient, in order that when returned, and having seen all this, this government may determine in favor of the petitioner.

(Signed) PICO.

In obedience to the preceding decree relative to reporting about the lands which the petitioner asks for, I say, that it is lying waste, and that the petitioner possesses the necessary legal requisites in conformity with the law of the case, but that I cannot give any information relative to the military post, as I am ignorant of its boundaries.

(Signed) JOSE DE LA CRUZ SANCHEZ.

MILITARY CAPITANCY OF SAN FRANCISCO,
October 18*th*, 1845.

In obedience to the supreme decree of the intermedient governor of this department, given on the 24th May of the present year, I say, that as the land which the interested party petitions for is lying waste, I am of opinion that it may be conceded to him, but that the two military posts of the barracks and fort should not be included in the concession.

(Signed) FCO. SANCHEZ.

Filed in office January 17th, 1853.

GEO. FISHER, *Sec'y.*

Translation of title.—Translation.

Pio Pico, First Member of the Departmental Assembly and Constitutional Governor of Californias.

[GOV'T SEAL.] Whereas Don Benito Dias has solicited for his personal benefit and that of his family the land known by the name of "Punta de Lobos," in the port of San Francisco, the necessary investigations having been previously made, I have, in virtue of the faculties conferred on me. granted to him, in the name of the Mexican nation, by a decree of this day, the said land, declaring to him the ownership thereof by these presents, in conformity with the law of 18th August, 1824, and the regulations of 21st November, 1828, subject to the approval of the most excellent Departmental Assembly, and to the following conditions:

1st. He may fence it without prejudice to the highways, roads, and easements, destining it to the use and cultivation which may best suit him.

2d. He shall ask for judicial possession from the respective magistrate in virtue of this despatch, by whom the boundaries shall be marked with the necessary landmarks.

3d. The land of which donation is made is of the extent of two sitios de ganado mayor, a little more or less, comprehending from the lagoon of the high hill to the "Punta de Lobos," and the same which is shown by the map which accompanies the record, (espediente.) The judge who shall give the possession shall cause it to be measured according to ordinance.

Wherefore I command that, holding the present title as firm and valid, a record be kept of it in the book to which it belongs, and it be delivered to the interested party for his security and other ends.

Given in the city of Los Angeles, on the 25th day of June, eighteen hundred and forty-six, on this common paper, for want of sealed.

(Signed) PIO PICO.

JOSE MATIAS MORENO,
Secretary ad int.

This title has been recorded in the proper book.

(Signed) MORENO.

Filed in office January 17th, 1853.

GEO. FISHER, *Sec'y.*

Exhibit A.—Rancho Punta de Lobos.

Sello cuarto Dos Reales.

Habilitado provicionalmente por la Aduana Maritima del Puerto de Monterey en el Departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

S'gd: MICHELTORENA.

EX'MO SOR. GOBERNADOR:

[CUSTOM HOUSE SEAL.] Benito Diaz, natural de Californias y vecino de S. Francisco, ante V. E. como mayor haya lugar y con el debedo respeto, hase presente que teniendo algunas cabezas de ganado mayor y no teniendo un citio adonde ponulas para su anuento; y hallandose valdio un paraje en la jurisdicion de S. Francisco, conocido con el nombre de la Punta de Loros, colendante al norte con el mar que corre al puerto de Sn. Fran'co, al sur con el serro que esta a la espalda de la micion de S. Francisco, conocido con el nombre del Seno de la laguna honda al viente con la loma alta y al pomente con la Punta de Lobos, que compendua poco mas ó menos dos citios de ganado mayor advertiendo que las ruinas del Presidio de Sn. Francisco y el Castillo que se hayan dentro del citio que dara esentos de la

peticion a su ser que el govierno guiera agraciarme con dichas ruinas; comprome tiendome si se efectua a fabricar una casa en el puerto de Sn. Fran'co para comandancia militar que tenga veinte y cinco varas de largo y seis de ancho.

Por tanto A. V. E. suplico tome en consideracion mi solicitud, concediendome el terreno que pretendo lo que espero de la acreditada bondad de V. E. en lo que recibiré gracia; govando lo necesario, &c., &c.

(Signed) BENITO DIAZ.

YERBA BUENA, *Abril* 3, *de* 1845.

Marginal Decree.

ANGELES, *Mayo* 24, *de* 1845.

Pase a informe del juez respectivo, y se espua que el Sor. Comandante Militar digo lo que tenga por conveniente, pa. que en vista de todo vuelta que sea al gob'no este resuelva lo que convenga a la parte que solicita.

S'gd: PICO.

En vista del superior decreto que antecede solve informacion del terreno quel el solicitante pretende dire que se halla baldio y q'l d'ho solicitante obtiene los requisitos necesairos, conforme la ley de materia pero que el punto que actualmente ocupa el punto que actualmente ocupa (el punto) militar no hodra dar una informacion para no haber sus ejidos.

F. DE LA CRUZ SANCHES.

PUEBLO DE SN. F'CO., *Agoste* 16, *de* 1845.

Comandancia Atlar de San Fran'co, Oct'e 18, de 1845:

De conformidad con el sup'r decreto q. antecede espedido por el E. Sor Gobernador Interino de este Departa'nto, en 24 de Mayo, del presente año, debe decir que hayandose valdio el interesado solicita buo se le puede conceder no comprendiendo en la concesion los dos puntos militares del Presidio y Castillo q. se hallan comprendidos en la solicitud.

F'CO SANCHEZ.

I, the undersigned, do hereby certify the foregoing to be a true and faithful copy of the original document on file in the archives of the Secretary of State's office for the Territory of California.

In the absence of the Secretary of State:

W. E. P. HARTNELL,
Gov't Translator.

Filed in office January 17th, 1853.

GEO. FISHER, *Sec'y.*

Punta de Lobos—Original grant—Copy.

Pio Pico, vocal decerno de la Asamblea Departamental y Gobernador Constitucional de las Californias.

[SELLO.] Por cuanto D. Benito Dias ha pretendido para su beneficio personal y el de su familia el terreno conocido bajo el nombre de "Punta de Lobos," cito en el puerto de S. Francisco, practicadas previamente las averiguaciones consernientes usando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido por decreto de este dia en consedulo el espresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la exma. Asamblea Departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin prejudicar las travecias, caminos y servidumbres, destinandolo el uso ó cultivo que mas le acomode.

2a. Solicitara del juez respectivo le de la posecion judicial en virtud de este despacho, por el cual se demarcaran los linderos con las mojoneras necesarias.

3a. El terreno de que se hace donacion es de la estencion de dos sitios de ganado mayor poco mas ó menos que comprende desde la laguna de la loma alta hasta la punta de lobos, y el mismo que demuestra el deseño que obra en el espediente. El juez que diere la posecion ló hara medir conforme á ordinanza.

En consequencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro a que corresponde, y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de Los Angeles a veinte y cinco de Junio de mil ochocientos cuarenta y seis, en este papel commun por falta del sellado.

PIO PICO.

JOSE MATIAS MORENO, *Srio. int.*

Queda tomada razon de este titulo en el libro correspondiente.

MORENO.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary of the board of commissioners to ascertain and settle private land claims in the State of California, and as such now having in my office and under my custody all the papers and books of record comprising the archives of the said board, do hereby certify that the preceding and hereunto annexed pages of tracing paper, numbered from to three inclusive, and each of which is verified by my initials, (G. F.,) exhibit true and accurate copies of certain documents on file and forming part of the

said archives in this office, having referred to the case No. 515 on the docket of the said board, wherein Joseph C. Palmer et al are the claimants vs. the United States, for the place named "Punta de Lobos."

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., the 22d day of June, A. D. 1854. [SEAL.]

GEORGE FISHER,
Secretary.

Filed in office June 21st, 1854.

GEORGE FISHER,
Secretary.

"*B. P. L*"—*Exhibit to Deposition of J. D. Stephenson, Mch.* 13, 1855.

STATE DEPARTMENT, TERRITORY OF CALIFORNIA,
MONTEREY, *July 26th*, 1848.

SIR: It is highly probable that the persons who *obtain* grants or deeds of sales of land from Pio Pico just as he was leaving the country will now, on hearing of his return to California, endeavor to obtain from him certificates that these grants or deeds of sale were not audited; I refer particularly to deeds of sales of land by Pio Pico which are dated at Los Angeles, about the 20th June, 1846: whereas it is believed he was not in that place between or about the middle of June and the latter part of July. Some of these letters purport to be recorded on the corresponding Book of Records, which book has been abstracted from the territorial archives. There are reasons for suspecting that this volume of records is now in the hands of some one of the holders of these audited letters, and that it is so retained in order to get Pico, on his return to this country, to enter these letters upon the record; or, if they have destroyed the book, to get his certificates that they were entered according to the dates they bear.

Something will undoubtedly be sought for from Pico to strengthen their unjust claims to government property. It is thought that if you can establish a friendly intercourse with Don Pico before he can have any communication with these holders of fraudulent titles, you may obtain from him a statement of the real facts of the case. The matter should be acted on with promptness, and will require much care and discretion in its management.

Very respectfully, your ob'dt serv't,

H. W. HALLECK,
Lieutenant of Engineers and Secretary of State.

Col. J. D. STEPHENSON,
Commander Southern Military District, Los Angeles.

Filed in office March 13th, 1855.

GEO. FISHER, *Sec'y.*

Before board of U. S. land commissioners to ascertain and settle private land claims in the State of California.

In the matter of the petition of Joseph C. Palmer et al., in case No. 515, claiming Wolf's Point, the claimants, by attorney, hereby file a full release of Benito Diaz from all responsibility for any (sale) guaranty of title.

JONES, TOMPKINS, & STRODE,
Att'ys for Claimants.

APRIL 2D, 1853.

Filed in office, April 2d, 1853.

GEO. FISHER, *Sec'ry.*

Recorded in journal, vol. 3, page 310.

GEO. FISHER, *Sec'ry.*

"A. P. L."—Exhibit to depo. of J. D. Stephenson.

HEADQUARTERS S. M. DISTRICT, CALIFORNIA,
CIUDAD DE LOS ANGELES, *Sept 17th*, 1847.

SIR: The enclosed is all the information I can give in answer to the enquiries contained in your letter of the 23d of August last, except that it is perfectly understood and can be proved.

I am informed that Governor Pico left here not later than the 17th June, and did not return for at least four weeks, and that the deeds alluded to in the within were all signed the night before Pico left the Pueblo, and when the United States was in possession of Commodore Stockton's forces between here and San Pedro, and were all antedated, which of course renders them void; besides, the proper forms were never complied with, and no Departmental Assembly has ever set since to confirm the grants.

I have the honor to be, very respectfully, your obdt. servant,

J. D. STEPHENSON,
Col. commanding S. M. District, California.

H. W. HALLECK,
Secretary of State.

Filed in office March 13th, 1855.

GEO. FISHER, *Sec'y.*

Punta de Lobos.—Doc. H. J. T. No. 2, annex to Depo. of Benito Diaz, taken before Com'r Harry J. Thornton.

En el puerto de Monterey, de Alta California, a los diez y nueve dias del mes de Setiembre, del año de mil ochocientos cuarenta y seis, ante mi Walter Colton, juez de paz de esta demarcacion, y ante los testigos que subscriben, comparecio Don Benito Diaz, y

dijo. Que por si y á nombre de su esposa Doña Luisa Soto de Diaz, y demas herederos y susesores y de quien de ellos hubiere titulo, voz, y forma en cualquiera manera, vende y da en venta publica y enagenacion perpetua por puo de heredad y para siempre famas a Don Tomas O. Larkin de esta vecinidad un terreno que le pertenece en propriedad por concesion que de el le liezo el exmo. Sor. Gobernador del Departamento, Don Pio Pico, segun consta del titulo que va agregado a la presente escritura fecha veinte y cinco de Junio del presente año. Cuyo terreno se compone de dos sitios de ganado mayor poco mas ò menos, situado en la entrada y puerto de San Francisco con los linderos que dicho titulo demuestra que son desde la Laguna de la Loma Alta hasta la punta de Lobos. Declara el vendedor no tenulo enagenado ni empeñado y que este libre de todo gravamen publico, y como tal se lo vende en el precio de un mil pesos, en moneda de plata comun y acuñada que tiene recibidos a su entera satisfaccion; que desde ahora se desprende y aparta del dominio, propriedad y otro cualquiera derecho que le asista al referido terreno, renunciandolo y traspasandolo en el comprador para que disponga de el como de cosa propria; obligandose el otorgante a que esta venta le sera cierta, segura y efectiva al comprador y que no le enqureteria ni mover a pluto ninguno.

En cuyo testimonio lo formo conmigo y los dos testigos que subscriben.

WALTER COLTON,
Chief Magistrate, Monterey.
BENITO DIAZ.

J. DE CASTANEDA.
JOSE JOAQUIN GOMEZ.
GUILLERMO R. GARNER,
Secretario de Magistrado.

En dicho dia, mes y año comparecio igualmente ante mi y los y a mencionados testigos Doña Luisa Soto de Diaz, esposa de Don Benito Diaz, y dijo: que en nombre suyo y de los hijos que en la actualidad tiene y de los que en adelante tenga da por bien vendido el parage ante mencionado y que renuncia espontanea y voluntariamte. todo derecho que á el pudrera tener ella y d'hos sus hijos.

WALTER COLTON,
Chief Magistrate, Monterey.
LUISA SOTO.

J. DE CASTANEDA.
JOSE JOAQUIN GOMEZ.
GUILLERMO R. GARNER,
Secretario de Magistrado.

This instrument of writing was sealed, signed, and delivered in

this office and in my presence this nineteenth day of September, one thousand eight hundred and forty-six.

WALTER COLTON,
Alcalde of Monterey.

WILLIAM R. GARNER, *Secretary.*

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private land claims in the State of California, hereby certify the foregoing to be a true and correct copy of document "H. J. T. No. 2" to deposition of Benito Diaz, in case No. 515, Joseph C. Palmer et al. vs. the United States, now on file in this office.

In testimony whereof, I have hereunto signed my name, at office at the city of San Francisco, Cal., this 23d day of March, A. D. 1855.

GEO. FISHER, *Sec'y.*

Translation of Doc. H. J. T. No 2 annexed to Deposition of Benito Diaz.

In the port of Monterey, in Upper California, on the nineteenth day of the month of September, one thousand eight hundred and forty-six, before me, Walter Colton, justice of the peace of this demarcation, came Don Benito Diaz, and he declared, that for himself and in the name of his wife, Dona Luisa Sto. de Diaz, and all other heirs and successors, and of whomsoever of them should have title, voice, and fame in any manner whatever, he sells and gives in public sale and perpetual alienation, by right of inheritance forever, to Don Thomas O. Larkin, of this vicinity, a certain tract of land which belongs to him in ownership by grant made to him thereof by his excellency the Governor of the Department, Don Pio Pico, as made to appear by the title hereto annexed, dated the 25th of June of the present year, which tract of land is composed of two square leagues, a little more or less, situated at the entrance and port of San Francisco, according to the boundaries described in the said title, which are from the "Laguna de la Loma Alta" to "Point Lobos." The vendor declares not to have sold, alienated, or pledged it, and that it is free from all public incumbrance, and as such he sells it to him for the sum of one thousand dollars in current money, the receipt whereof he acknowledges to his satisfaction; that henceforth he desists and separates himself from the dominion, ownership, and whatever other right he may have to the said tract of land, renouncing it and transferring it unto the vendor, that he may dispose of it as a thing of his own, the vendor obligating himself that this sale shall be certain, sure, and effective to the vendee, and that he will not molest him or bring any suit against him.

In testimony whereof, he signed it with me and two subscribing witnesses.

(Signed) WALTER COLTON,
Chief Magistrate, Monterey.

(Signed) BENITO DIAZ.

(Signed) J. D. CASTANEDA.
(Signed) JOSE JOAQUIN GOMEZ.
(Signed) GUILLERMO R. GARNER,
Secretary to the Magistrate.

On the aforesaid day, month, and year, before me and the witnesses above mentioned, came Dona Luisa Soto de Diaz, wife of Don Benito Diaz, and declared, that in her own name and that of her children which she now has and of those she may have, she acknowledges the aforesaid place to be justly sold, and that she freely and voluntarily renounces all her own right and that of her said children thereunto.

(Signed) WALTER COLTON,
Chief Magistrate, Monterey.

(Signed) LUISA SOTO.

(Signed) J. DE CASTANEDA.
(Signed) JO. JOAQUIN GOMEZ.
(Signed) GUILLERMO R. GARNER,
Sec'y to the Magistrate.

A true and correct translation of its original in case No. 515, Joseph C. Palmer vs. the United States, now on file in this office, as a certified copy. Witness my official signature this 2d day of April, A. D. 1853.

GEO. FISHER, *Sec'y.*

Release.

Before board of U. S. commission to ascertain and settle private land claims in the State of California—

In the matter of the petition of Joseph C. Palmer et al., in case 515, claiming Wolf's Point, the claimants by attorney hereby file a full release of Benito Diaz from all responsibility for any guaranty of title.

JONES, TOMPKINS & STRODE.

APRIL 2d, 1853.

Filed in office April 2d, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Journal, vol. 3, p. 310.

GEO. FISHER, *Sec'y.*

Stipulation.—No 515, *Joseph C. Palmer et al. Claimants.*

It is hereby stipulated that the annexed deposition of Vicente Gomez may be deemed and taken as duly filed in the case before the matter was submitted to the board.

J. H. McKUNE,
U. S. Law Agent.

V. E. HOWARD,
Att'y for Claimants.

Filed in office May 17th, 1855.

GEO. FISHER, *Sec'y.*

Deposition of V. P. Gomez.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *May* 17, 1855.

On this day, before Commissioner S. B. Farwell, came Vicente Prefecto Gomez, a witness on behalf of the United States, in case No. 515, wherein Joseph C. Palmer et al. are claimants; who, after being duly sworn, deposed as follows—his evidence being interpreted by the interpreter of the board.

The U. S. law agent is present.

Mr. Howard appeared as attorney for claimants.

Question by U. S. law agent.

1st question. What is your name, age, and place of residence?

Answer. My name is Vicente Prefecto Gomez, my age 31 years, and I reside in Monterey, California.

2d question. Look at document marked H. J. T. No. 1 annexed to deposition of Benito Diaz, and marked A No. 1, "G. T. B," and attached to the deposition of Pio Pico, and filed in this case, and state whether you ever saw the said document before; if yea, when, where, and state all you you know about it, and when and under what circumstances it was signed, if you know the same?

Answer. I have examined the said document, and can state that I have seen the same before. I saw it in the Juzgado of Monterey at the time that Benito Diaz sold it to Mr. Larkin. The signed document was signed at Los in 1846, at the solicitation of Benito Diaz. This is all I know relative to the document.

3d question. Who were present at the signing of the document by Governor Pico?

Answer. Cayetano and Luis Arenas were present, and myself and Benito Diaz. I do not remember more than those.

4th question. Do you recollect when the Americans took pos-

session of Monterey in 1846? if yea, was the said document signed before or after that event, and how long?

(4th question objected to by claimant's counsel.)

Answer. The Americans took possession of Monterey on the 7th day of July, 1846, and the said document was signed after the occurrence of that event; I do not know how long afterwards; we were at Los Angeles with a force under the command of Don Jose Castro at the time.

The attorney for the claimant declines to cross-examine the witness.

VICENTE GOMEZ.

Sworn and subscribed before me this seventeenth day of May, 1855.

S. B. FARWELL, *Commissioner.*

Filed in office May 17th, 1855.

GEORGE FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, page 744.

GEORGE FISHER, *Sec'y.*

Receipt of the Attorney for the Claimant for original papers.

Received, San Francisco, March 23d, 1855, of George Fisher, secretary of the board of commissioners to ascertain and settle the private land claims in the State of California, an original Spanish document marked "Document H. J. T. No. 2," annexed to the deposition of Benito Diaz taken before Commissioner Harry J. Thornton, April 2d, 1853, for the purpose of having the same recorded in the county of San Francisco, to deliver the same to the secretary of the said board, it being a part of the file of papers No. 515, Joseph C. Palmer, for the "Punta de Lobos."

V. E. HOWARD,
For Claimant.

Filed in office March 23d, 1855.

GEO. FISHER, *Sec'y.*

"*Punta de Lobos.*"—*Letter of V. E. Howard.*

SAN FRANCISCO, *April 26th*, 1854.

To GEORGE FISHER, Esqr.,
Secretary of Board of U. S. Land Commissioners,
San Francisco, Cal.

SIR: Wishing to avail myself of the opportunity that offers of taking the testimony of witnesses residing in Los Angeles county, to be used before the U. S. commissioners, I have to request that

on receipt of this you will forward to Commissioner Burrill the original title or grant of Point Lobos, No. 515, filed in your office.

I have important testimony to adduce, which cannot be taken except by producing the genuine title-deed, for which reason you will oblige by complying with this just request.

I remain, sir, your obdt. servt.,

V. E. HOWARD.

Filed in office June 17th, 1854.

GEO. FISHER, *Secretary.*

[For map, see original, between pages 35 and 36.]

2. *S. D. K.—No.* 4.

Territory of California, District of San Francisco, Chief Magistrate's office:

YERBA BUENA, *October 6th*, 1846.

This is to certify that Thomas O. Larkin, esq'r, for himself and as the representative of Don Benito Diaz, has presented at this office the title to the farm called "Punta de Lobos," on San Francisco bay, as described in said title or grant to the said Don Benito Dias, and transfer from said Diaz to the said Thomas O. Larkin, esq'r:—he, the said Thomas O. Larkin claims ownership of said farm, and asks possession thereof, with permission to survey and occupy the land (as described in the title) at the earliest practicable moment.

This is, therefore, to order that, in accordance with the aforesaid, Thomas O. Larkin, esq'r, can enter upon said premises, and be held to be and considered in legal possession thereof, according to the terms and conditions of the original grant, the boundaries whereof to be fixed as soon as a competent surveyor can be obtained to survey the same.

(Signed) WAST. A. BARTLETT,
Chief Magistrate.

The undersigned do hereby certify that the foregoing documents, marked Nos. 1 and 2, are faithful translations, and those marked Nos. 3 and 4 true copies of their respective originals.

(Signed) E. P. HARTNELL,
Gov't Translator.

MONTEREY, 19*th August*, 1847.

State Department of the Territory of California:

MONTEREY, *Feb'y* 28*th*, 1849.

I certify that the foregoing documents, Nos. 1, 2, 3, 4, are true copies.

H. W. HALLECK,
B't Capt. and Sec'ty of State.

and the grant aforesaid, and also a deed from the said Dias to Thomas O. Larkin, dated the 19th day of September, 1846, but have not offered in evidence anything to show that the present claimants have any interest in the land whatever, either equitable or legal, and the claim will therefore have to be rejected.

Rejected.

Filed in office August 14th, 1855.

GEO. FISHER, *Sec'y.*

JOSEPH C. PALMER et al.
vs.
THE UNITED STATES. } No. 515.

Decree.

In this case, after hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners is not valid; and it is therefore decreed that their application for a confirmation thereof be denied.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office August 14th, 1855.

GEO. FISHER, *Sec'y.*

Order.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the divisions in this case and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary: one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing sixty-one pages, numbered from 1 to 61, both inclusive to contain a true, correct, and full

transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 515 on the docket of the said board, wherein Joseph C. Palmer et al. are claimants against the United States, for the place known by the name of "Punta de Lobos."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-sixth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed January 30th, 1856.

JOHN A. MONROE, *Clerk.*

Notice of intention to prosecute appeal.

In the district court of the United States for the northern district of California.

THE UNITED STATES vs. J. C. PALMER et als. } No. 394.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California against the claimants, and a transcript of the proceedings in which was filed in this office January 30th, 1856, the appeal in the district court of the United States for the northern district of California will be prosecuted by said claimants.

HOWARD & GOULD,
Atty's for Claimants.

To the DISTRICT ATTORNEY of the United States for said district.

Endorsed: Filed July 26th, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition for Review.

District court of the United States in and for the northern district of California.

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER, BETHUEL PHELPS, and others, claimants and appellants. } Case No. 394.

On appeal from board of U. S. land commissioners for the State of California. Case No. 515 on its docket.

Claim for rancho "Punta de Lobos."

The petition of the said Joseph C. Palmer, Bethuel Phelps,

Charles W. Cook, and Dexter R. Wright, claimants, petitioners and appellants, represents to this honorable court that this proceeding is an application by the said appellants for a review of the decision of the said board of United States land commissioners rejecting the claim of the said claimants against the United States, for the rancho or tract of land known as "Punta de Lobos," at the entrance of the bay of San Francisco, containing two square leagues of land, a little more or less, in the city and county of San Francisco, State of California, the said claim being under a grant bearing date June 25th, A. D. 1846, from Pio Pico, Governor, &c., of the Californias to Benito Diaz, to all of whose rights and interests in the said rancho "Punta de Lobos," the claimants and petitioners herein have duly succeeded; for a more particular account whereof, for a description of said land and premises, and for a deraignment of the said claimants' title, a special reference is here made to the petition of the said claimants filed before the said board of U. S. land commissioners, and appearing in the transcript therefrom filed in this case in the above-entitled district court.

And your petitioners would represent that the said board of U. S. land commissioners, on the 14th day of August, A. D. 1855, delivered its opinion and decision rejecting the said claim; and that afterwards, to wit, on the 30th day of January, A. D. 1856, a transcript of the proceedings and decision of the said board of U. S. land commissioners, and of the papers and evidence on which the same was founded, was filed according to law with the clerk of the district court of the United States in and for the northern district of California, in which said northern district the said land and premises here claimed are situated; and that within six months thereafter, to wit, on the 26th day of July, A. D. 1856, the said claimants and petitioners filed according to law a notice with the clerk aforesaid of their intention to prosecute the appeal taken in this case.

And finally, your petitioners would represent that their claim to the said land and premises mentioned in their said petition to the said board of U. S. land commissioners, and hereinbefore described, is a good and valid one, and ought to be confirmed.

Wherefore your petitioners pray that the said decision herein of the said board of U. S. land commissioners may be wholly reversed and annulled, and that this honorable court may decree the title of your petitioners to the said land and premises to be a good and valid one, and confirm the same.

And your petitioners will ever pray.

HOWARD & GOOLD,
Counsel for claimants, appellants, and petitioners.

SAN FRANCISCO, *May 2d*, 1857.

Endorsed: Filed May 7th, 1857.

JOHN A. MONROE, *Clerk.*

Answer.

District court of the U. S. in and for the nor. dist. of Cal'a.

THE UNITED STATES, appellees,
vs.
JOSEPH C. PALMER, BETHUEL PHELPS, and others, claimants and appellants. } Case No. 394.

On appeal from board of U. S. commissioners for the State of California.—Claim for rancho "Punta de Lobos."

Then come the United States into court, and by their attorney deny the validity of the title set out in the petition of said claimants and appellants, and pray that the decision of the board of U. S. com'rs in this cause be affirmed, and that the said title be decreed to be invalid.

WM. BLANDING, *Dist. atty.*

SAN FRANCISCO, *May 7th*, 1857.

Endorsed: Filed May 7th, 1857.

JOHN A. MONROE, *Clerk.*

Order fixing time of trial.

At a stated term of the district court of the United States of America for the northern district of Cal'a, held at the court room in the city of San Francisco, on Monday, the 13th day of April, 1857—present, hon'ble Ogden Hoffman, district judge:

THE UNITED STATES, appellees,
vs.
JOS. C. PALMER et als., claimants and appellants. } No. 394 for Punta de Lobos.

On motion of A. C. Whitcomb, of counsel for claimants, it is hereby ordered by the court that the above-entitled cause be set for trial and a hearing on Wednesday, May 6th, 1857, at the opening of the court on that day.

(Endorsed:) Filed April 13th, 1857.

JOHN A. MONROE, *Clerk.*

Deposition of Benito Diaz.

United States district court, northern district of California.

THE UNITED STATES.
vs.
JOSEPH C PALMER et als.

SAN FRANCISCO, *May 7th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and

referee, appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Benito Dias, a witness produced on behalf of the claimants in case No. 394, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 515 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by J. Edgar Grymes, a sworn interpreter:

Present, W. Blanding, esq'r, U. S. district attorney, and A. C. Whitcomb, for claimants.

Answers to questions by claimant's counsel.

My name is Benito Diaz, 43 years old, and I reside in Monterey. I am the original grantee to the rancho "Punta de Lobos;" I know Juan Bandini.

Look at this document, marked exhibit "No. 1, J. E. G.," attached to this deposition, purporting to be an original letter from said Bandini to Don Benito Diaz, and state whether you have ever seen said letter; and if so, when and where, and to what does it relate?

Ans. I have seen it before; this is an answer to a letter that I wrote to him when I sent my petition asking for the rancho "Punta de Lobos." I believe I received it in the beginning of June, 1845, here in San Francisco. This letter refers to my application for the "Punta de Lobos."

Question. Do you know James C. Crane and John H. Watson, who have testified in this case before the land commissioners? If you do, examine their depositions on pages 24, 25, 26, 27, 28, and 29 of the transcript in this case, and state whether or not you have ever had conversations with them in reference to the title of the land claimed in this case; and if so, whether the statements attributed to you in said depositions in reference to the said title were made by you.

Ans. I know James C. Crane and John H. Watson; I have examined said depositions, and answer that I have had conversations with Crane, but never had any with Watson, (as he does not speak Spanish,) about this title. I never had any conversation with Watson but once. James C. Crane acted as interpreter. I never said anything about the title to Watson. Once, after Gomez had made statements about this title, Crane asked me whether the title was not made in August, and I laughingly told him, "Yes, yes; just as Gomez says."

I never told Crane that I had written this title after I left Monterey for Los Angeles, but I told him that I had written it before I left San Francisco.

I have had many conversations with Crane; we were friends,

and I always told him that this was a good title, except the time I have spoken of above in connection with Gomez's statements; I said the month of August only to laugh and make fun of Gomez.

Question. Do you know Vicente P. Gomez? and if so, whether you have had any conversation with him about this title? and if so, what did he say about it?

Ans. The only time I had any conversation with him was one day when I returned from Monterey. Having heard that he had given his testimony against this claim, I spoke to him angrily about it, and he denied to me that he had ever given any testimony in this case, and said that he had never seen the title, and knew nothing about it.

Question. Do you now recollect the names of any persons who saw the original title in this case before the 7th of July, 1846? if you do, what are they?

Ans. I remember two persons—one was Bernardino Soto, and the other was Antonio Osio, who was the one who brought me the letter; I mean by letter, the letter containing the original title.

Three or four days after the 7th of July, I showed it to Manuel Dutra and Gabriel de la Torre. The way that Dutra saw it was, that I hypotheticated the title with him for money that he lent me to go to the lower country at that time.

Osio is in Lower California. Eulogio Celis was the agent to whom I sent the title to Los Angelos to get it signed by Pio Pico. I believe that Celis is now in Spain.

Question. Were you ever present with Governor Pio Pico, Luis and Cayetano Arenas, and Vicente P. Gomez, after the 1st day of July, 1846, when Governor Pio Pico signed the title in this case, or in any other case?

Answer. Gomez was never present when I was in the presence of Governor Pico. I never was in the presence of Governor Pico after the 1st July, 1846, when he signed any title papers.

The two letters "S. N." on the back of the document, marked "Exhibit No. 1, J. E. G.," signify "*servicio national*," and when so written on documents they are franked and go free.

Examination adjourned to Saturday the 9th May, at 11 o'clk. a. m.

Examination adjourned to Monday the 11th inst. at 1 o'clk.

MONDAY, *May* 11*th*, 1857.

Direct examination continued.

Question. Did you ever receive any other letter from Bandini in relation to the land claimed in this case? if so, when was it, and where is it now?

Ans. I received another letter in relation to this land at the end of May or beginning of June, in 1846. I do not know where it is. I left it in the custom-house in this city when the Americans

took the place, and I never knew what became of it. I was in charge of the custom-house at that time, as collector of customs. I remember the substance of the letter: "that as the governor and the commandante were on bad terms together, that I had better send down to him all the papers concerning the land that I had petitioned for, so that the governor might make the concession of the land in this case."

I know the handwriting and signature of Juan Bandini, and the two letters were written in his own handwriting, and signed by him.

Question. When and where did you receive the original title in this case?

Ans. I received it in Monterey. I am not certain as to the very day, but it was either the 5th or 6th of July, 1846. I recollect it, because I left Santa Clara for Monterey on the 4th, and arrived at the latter place the same day. The 4th was a feast day of the patron saint of all California, and I received said title either on the 5th or 6th of July, 1846. I received it from my compadre, Antonio Maria Osio, to whom it had been delivered for me.

Gomez was, in July, 1846, a common soldier in my company, and could not go out of his quarters, because he had no clothes. I never saw him in the company of the governor.

I gave a diseño to the governor, accompanying the espediente in this case.

A map or diseño being shown to witness, marked "1 S. D. K.," attached to the transcript, he says, that "it appears to me to be an exact copy of the original which I gave to the governor. I do not know where the original diseño now is.

The diseño was in the same bundle with the other papers sent, but not attached together. When I said that the two letters were written and signed by Juan Bandini, I mean the letter attached to this deposition, and the one which was lost.

Cross-examination.

Juan Bandini was secretary of the government when he wrote to me this first letter. When he wrote the second he was only private secretary to the governor. I believe, but I am not certain, that he commenced to be secretary of the government when Pico was first governor. I do not remember when he ceased to be secretary to the government. I believe that José Maria Corarrubias succeeded him. I think that when Corarrubias succeeded him, that then he became private secretary. I do not remember the date of the title. I think it is dated in the latter days of June, 1846. It was signed by the governor at Santa Barbara. It was written here in San Francisco. I wrote it myself; I sent it myself by a public courier; I directed them to Los Angeles; the courier met the governor between San Buenaventura and Santa Barbara.

I know that fact, because my agent, Celis, told me so when I next saw him.

I know Vicente P. Gomez well. He was not an intimate friend of mine. Gomez was a volunteer soldier in the summer of 1846. In 1844 he was a writer in the commissariat. Gomez was never clerk in the governor's office. I was not present when the governor signed the title. I know that Gomez was not present when the governor signed it, because he was in Santa Clara. I know that he was at that time at the headquarters of General Castro in Santa Clara. I saw Gomez there myself either on the 30th of June or 1st of July, 1846. He must have been there before that time, because he left Monterey with the army. I was myself with the army at that time. I think that Gomez is not a man of veracity.

Before he gave his testimony in this case, I would have believed him on his oath, but since that time I would not believe him. I would not believe him on his deathbed. I only spoke to Gomez once about this title; it was when I heard of his having given his testimony. I never had any hard words with Gomez either before or after the giving of his testimony, (only the time I have spoken of before,) as he always denied that he had given any testimony in this case.

I know Mr. James C. Crane well. It is doubtful if he is a man of veracity. I would not believe him on his oath. I did know John H. Watson. I do not know if he is a man of veracity. I have no acquaintance with him. I know him by sight. I had a conversation once with him through an interpreter.

Gomez, previous to the time of his giving his testimony, was making unfavorable statements against the title to avenge himself against Larkin, because he thought Larkin was a large owner. I never heard his statements, but I was told of them.

BENITO DIAZ.

Sworn to and subscribed before me May 11th, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Exhibit No. 1, *J. E. G., attached to the deposition of B. Diaz.*

Sor. D. BENITO DIAZ.

ANGELES, *y Mayo* 24, *de* 1845.

MI ESTIMADO AMIGO:

Vuelve a v. la representacion qe. dirijio al gobo. pa. qe. informes de estilo y qe. v. indico. Cuanto mayor hubiera sido qe. sacando antes los certificados ó otros informes los hubiese v. acompañado a su solicitud, esta fuera la hora de qe. yo tubiese la satisfaccion de remiter a v. concluida su asunto; espero ya qe. no fue asi me prometo el gusto de su recomendacion a la vuelta.

Han estado vdes. muy directidos el dia 11 y es menester no entregarse tanto a los placeres: el gobo. toma providencias qe. debe aliviarles del cansancio de tales direcciones. Sirvase v. dar mas espresiones a los Sres. Leidesdorff, Hinkley, Davis, y demas amigos y v. reciba la voluntad qe. le profesa, su afno. servidor.

JUAN BANDINI.

Translation of exhibit "No. 1, J. E. G.," attached to the depo. of Benito Diaz, taken before J. Edgar Grymes, a special comm'r.

ANGELES, 24*th May*, 1845.

Señor DON BENITO DIAZ.

MY ESTEEMED FRIEND: Herewith is returned you the petition which you addressed to the government, in order to have the customary certificates in the manner which you pointed out. How much better it would have been if you had first obtained the certificates or other "informes," (informations,) and had sent them with the petition, for I should now have the pleasure of sending to you all your matters concluded. But as it was not so, I promise myself the pleasure of recommending you on its return. You have had many diversions on the 11th, and it is not necessary to occupy yourselves so much in amusements. The government will take measures to relieve you from the tiresomeness of such diversions. Have the goodness to remember me to Messrs. Leidsdorff, Hinkley, Davis, and other friends, and receive the good will which is offered you by

Your very affectionate servant,

JUAN BANDINI.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Deposition of Luis Arenas.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEPH C. PALMER et als.

SAN FRANCISCO, *May* 11*th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Luis Arenas, a witness produced on behalf of the claimants in case No. 394, being an appeal from the board of commissioners to ascertain and settle the private land

claims in the State of California, in case No. 515 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being in Spanish, and interpreted by the commissioner.

Present, Wm. Blanding, U. S. dist. attorney, and A. C. Whitcomb, esqr., for claimants.

Answers to questions by claimants' council.

My name is Luis Arenas, 71 years old, and I reside in San Buenaventura, Santa Barbara county. When Sonoma was taken by Fremont's men, when the bear flag was raised, I was in San José, and the day I heard of it I started for Los Angeles, where I remained before and after it was taken. It took me 8 to 10 days to go down to Los Angeles. I know Vicente P. Gomez.

The witness is now shown the deposition of V. P. Gomez taken in this case before Commissioner Farwell on the 17th day of May, 1855, and appearing on pages 49 and 50 on the transcript in this case, and says:

"I was never present with Governor Pio Pico, Benito Diaz, the said V. P. Gomez, and Cayetano Arenas, as stated by said Gomez in his deposition.

I never was present with Gomez, with Governor Pio Pico at all; I never saw the title of 'Punta de Lobos,' and do not know where the land lies.

I never saw Pio Pico sign any titles after the taking of Sonoma. I never saw him sign anything except papers about my own business. I never saw him sign any papers about other persons' business.

It is not true that I was present when Governor Pio Pico signed the title for 'Punta de Lobos.' I do not know anything about it."

Cross-examination.

I do not remember the day or month when I reached Los Angeles, but I was there where the Americans took it.

I do not remember the day, month, or year of the taking of Sonoma. I never saw him (Pio Pico) sign any titles except for myself. I went to the governor's very seldom, except when I had business with him. I do not remember of having seen Gomez ever in the office of the governor.

I have seen Benito Diaz in the governor's office.

Governor Pio Pico sold me and two others the orchard of the mission of Santa Clara.

LUIS ARENAS.

Sworn to and subscribed before me May 11th, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Deposition of Cayetano Arenas.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEPH C. PALMER et als.

SAN FRANCISCO, *May 12th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee, appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Cayetano Arenas, a witness produced on behalf of the claimants in case No. 394, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 515 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by J. Edgar Grymes, a sworn interpreter.

Present, Wm. Blanding, U. S. dist. att'y, and A. C. Whitcomb, for claimants.

Answers to questions by claimants' counsel.

My name is Cayetano Arenas, 32 years old, reside in San Buenaventura, Santa Barbara county.

I lived in Los Angeles in the months of July and August, 1846. I was employed as a clerk in the government office in July, 1846.

I know V. P. Gomez. I did not know him in the year 1846. I first knew him a year or two ago.

The witness is now shown the deposition of V. P. Gomez taken in this case before Commissioner Farwell on the 17th day of May, 1855, appearing on pages 49 and 50 on the transcript in this case, and says:

"I was never present with Governor Pio Pico, Benito Diaz, the said V. P. Gomez, and Luis Arenas, (who is my father,) as stated by said Gomez in his deposition.

I never was present with Gomez, with Governor Pio Pico at all. I never saw the title-papers of 'Punta de Lobos.' I do not even know where the land lies. I never saw the governor, Pio Pico, sign any title-papers after the taking of Monterey on the 7th of July, 1846.

It is not true that I was present when Governor Pio Pico signed the title for 'Punta de Lobos.'

I know nothing of the title of 'Punta de Lobos,' except that I have heard that the land was granted to Don Benito Diaz. I have never seen the title."

I know James C. Crane. He is an American, who speaks the

Spanish language, about 45 to 50 years old. About two years ago I was working on my ranch at San Buenaventura, when Mr. James C. Crane came up to me, and after the usual salutations, I inquired what brought him down there. He said that he came to buy pears to bring them up to San Francisco. I answered, "it is queer you should come without a wagon to transport the pears." I then told him he had come too late, for all the pears had been disposed of. He then asked me whether I would not like to take a trip to San Francisco, and to give my testimony against the titles of "San Mateo," and "Punta de Lobos." I told him "no," I did not care about going, as I knew the title of "San Mateo" to be a good title, and that I knew nothing of the title of "Point Lobos." He then said that I could make 5,000 to 6,000 dollars by going up there to testify against the claims, and said that if I did not have money to defray my expenses, that there was $200, which he offered me then. He then told me that I was a fool to work so hard like a jackass, (burro,) when I could come up to San Francisco and make that sum; and besides, that the squatters would give me their protection.

I had another conversation with Crane about two months ago. He told me that he wished me to come before the district court and testify as to the validity of this claim. He offered to give me $50, which I refused. I then told him, it was strange that 2 years ago he had offered me money to testify against it, and that he wished I should do now the reverse. I refused to have anything to do with it. He also told me that he was satisfied that it was a good title, and he did not see how Gomez had testified against it.

I had a conversation with Gomez two or three weeks ago. I asked him how was it possible that he could have testified that I was present when the governor signed the title in this case. I told him I was a poor man, and he knew it, and that I came up here to refute that testimony. He then said that he had never in all his life given such testimony. I told him that he was the cause of my being compelled to leave my work and come up here to testify. Gomez told me that he knew nothing of the title of the "Punta de Lobos."

Cross-examined.

Mr. James Harbin begged me to come up here to give my testimony. I received nothing to come up here to give my testimony. I am under many obligations to Mr. Harbin, so much so, that if he was to ask me to go to the United States, I should go. I paid my own expenses, but I do not know whether Mr. Harbin will pay them or not afterwards.

The obligations which I am under to Mr. Harbin are, that he has always helped me; he has worked for me, and never demanded

pay. My father was sick in Sacramento city; he did all he could for him; and these are obligations that I never forget.

I do not know what interest Mr. Harbin has in this case. He wrote me a letter to come up here, and I came. I have not this letter with me; I left it, I think, in San Buenaventura. I remember only of having given my testimony before the land commission in the cases of San Mateo and Mission Dolores. I may have given another. I have given my testimony once in the district court of Los Angeles. I testified here in the orchard of "Santa Clara," in a piece of land called "Cococha," which Peralta was claimant of; Ulpines, of which Suco was claimant. I testified in favor of the claimants.

I testified to certain things which I knew to be so. About the title of the Mission Dolores, I am certain that it is genuine. The title of "San Mateo" is genuine, for I wrote it. About Ulpines I saw a title signed by Corarrubias, but I cannot swear as to the signature of Pio Pico, for I did not see him sign it. I met Suco, and he asked me whether I know the title of Vulpines. I told him I thought so. I went up and saw the title. I knew it, and then Suco said he wished me to testify as to its genuineness.

Howard got me himself to come up and testify in the "San Mateo" claim. I was the grantee in said rancho; I sold it to Howard.

I do not require money to testify in cases, whether in true cases or in false ones.

Don Alberto Packard asked me to testify in the case of the Mission Dolores.

When I had the conversation with Mr. Crane, I met him in a street. I do not know the name of the street. I met him in March this year. Crane was the one who spoke first. Crane told me that if I would testify in this case he would give me $50. He said that it was strange that Gomez had testified against this claim; that the title was good. I refused to testify; then Crane told me "he could not catch me this time, but he would one of these days." I had previously told him I knew nothing about the title. I refused to testify, because I knew that Crane hated me, and wanted to catch me. "I can't catch you now, but I will another time," he said.

I know in my own conscience that he wanted me to testify against the claim, but he asked me to testify in its favor.

I know in my own conscience that he wanted me to testify against this claim, for he tried to have me do the same in the "San Mateo" claim, saying that the squatters would protect me.

I would not believe him under his oath. I would believe Gomez's oath much less, because he said a lie in his case.

I would believe Benito Diaz on his oath. His character for veracity is good. I know him pretty well, but not intimately. Benito Diaz did not ask me to come here and testify in this case.

Personally he did not tell me anything about this case. He never spoke to me about this case.

I do not know how Crane came to speak to me about it. I am pretty certain that Crane came down to my ranch to get me to testify, because he offered me money on the spot.

CAYETANO ARENAS.

Sworn to and subscribed May 12th, 1857, before me.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Deposition of Manuel Dutra.

United States district court, northern district of California.

THE UNITED STATES
vs.
JOSEPH C. PALMER et als.

SAN FRANCISCO, *May 13th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to admister oaths, &c., &c., came Manuel Dutra, a witness produced on behalf of the claimants, in case No. 394, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 515 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by J. Edgar Grymes, a sworn interpreter.

Present, Wm. Blanding, esq'r, U. S. dist. attorney, and A. C. Whitcomb, for claimants.

Questions by counsel for claimants.

Question. What is your name, age, and residence?

Answer. My name is Manuel Dutra, 35 years old, and I reside in Monterey.

The witness is now shown the original title in this case from Governer Pio Pico to Don Benito Diaz, dated June 25th, 1846, attached to the deposition of Governor Pio Pico, taken before G. Thompson Burrill, on the 5th day of July, 1854, at Los Angeles, a copy of which said original title, and deposition appears on pages 11, 12, and 13 of the transcript in this case, and is asked:

Question. Have you ever seen said original title; and if so, when, where, and under what circumstances?

Ans. I have seen this title before in Monterey, in my house. I held it as security on the 11th or 12th day of July, 1846. I got it from Diaz.

Benito Dias wanted to go to the lower country, and came to me to borrow money on this title. I examined it, thought it was a good one, and I lent him $40 on it, holding it as security for the money. I held it more than a month, then I returned it to him on the payment of the money, and one bit on each dollar for the use of the money while he had it as interest. When Diaz took it back from me, he said that he got it for the purpose of selling it to it Thos O. Larkin.

Cross-examined.

The paper that he gave me was the title of the claim of "Punta de Lobos." It was signed by Pio Pico as governor, and Matias Moreno as secretary. I do not know or remember the first name of Moreno, it is so long a time ago. (The previous sentence was in answer to the question, what was the first name of Moreno.)

I do not remember the date of the title. I had heard where the "Punta de Lobos" was, but I did not know it personally, as I never was here in San Francisco, before the year 1850.

After I got the title paper, I was talking about it to several persons, and it was then that I heard that the "Punta de Lobos" was in the vicinity of San Francisco. I knew where the "Punta de Lobos" was when I lent the money to Diaz, by reading the description of the land in the title. I do not remember the description and limits, it is so long since. When I lent Diaz the money, he did not sign anything or put anything on the back of the title. In those days we were not accustomed to do those things in small matters—in large matters we had writing. When I received this title, Don Gabriel de la Torre and Bernadino Soto were present, and they told me where the "Punta de Lobos" was situated. This was on the 11th or 12th of July, 1846, when those gentlemen were present. I have seen this title the other day. I saw it in San Francisco. Mr. Larkin asked me to come here to give my testimony in this case. I have not had any conversation with Benito Diaz about this case lately. I have not spoken with him lately about the money I lent him in 1846.

I am positive in saying that I have not spoken to Diaz about giving my testimony in this case. I do not know that I have spoken with any persons about this case. If I have, I do not remember with whom. I can only fix the date of returning the title paper to B. Diaz, by its being only 6, 7, or 8 days over a month, and I charged interest only for a month. I am certain of the month being the month of July when I received it, because it was after the taking of Monterey by the Americans. It was three or four days after the taking of Monterey by the Americans that I

lent Diaz the money. Monterey was taken on the 7th July, 1846. It was not my business to lend money in those times. I knew Diaz very well, and he was poor, and I lent him that sum.

MAN'L DUTRA.

Sworn to and subscribed before me, May 15th, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed June 6th, 1857.

JOHN A. MONROE,
Clerk.
By W. H. CHEVERS,
Deputy.

Deposition of Gabriel de la Torré.

United States district court, northern district of California.

THE UNITED STATES
vs.
JOSEPH C. PALMER et als.

SAN FRANCISCO, *May 13th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee, appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Gabriel de la Torre, a witness produced on behalf of the claimants in case No. 394, being an appeal from the board of commissioners to ascertain and settle the private land claimsin the State of California, in case No. 515 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by J. Edgar Grymes, a sworn interpreter:

Present, W. Blanding, esq'r, U. S. district attorney, and A. C. Whitcomb, for claimants.

Questions by counsel for claimants.

Question. What is your name, age, and place of residence?

Answer. My name is Gabriel de la Torre, 49 years old. I reside in Monterey.

I have seen the title of "Punta de Lobos." I saw it at Monterey, a few days after the taking of Monterey by the Americans, in the month of July, 1846. I saw the title-papers at the house of Don Manuel Dutra. I was at the house of Manuel Dutra, in company of Bernardino Soto, talking together, when Mr. Benito Diaz came in, and told Mr. Dutra that he wished to speak to him. I retired in a corner, but within hearing of the conversation, when

Mr. Diaz asked Mr. Dutra to lend him some money, saying that he was very poor, and wished to go down the country. Diaz also said that he had some security. Dutra asked for the security, and Diaz took it out of his pocket and handed it to Dutra, who began to read it. Dutra remarked that it was the title for the "Punta de Lobos;" that it was a good title, and handed Diaz $40, with interest of one bit on each dollar per month.

One or two days before, I had left San Juan, in company with my brother, Joaquin de la Torre, and Ignacio Esquer, (I think that it was the latter-named person, but I am not certain.) I heard them talking about a concession which had been given to Benito Diaz, called "Punta de Lobos." They were talking together. I asked my brother what it was, and he told me it was a piece of land near San Francisco, which had been granted to Benito Diaz. When I arrived at Dutra's house, whilst there, when I heard the conversation between Diaz and Dutra, I said to myself, that is the title for "Punta de Lobos" that my brother and his friend were talking about yesterday. I do not remember the exact number of days that I saw the title-papers after the taking of Monterey; but it was a very short time after, because I was hiding myself from the Americans in Dutra's house. I was at that time captain of artillery.

Cross-examined.

When I heard the conversation between Dutra and Diaz, I know that Bernardino Soto was present; there might have been others, but I do not remember. Soto and myself did not engage in the conversation between Diaz and Dutra; Soto and myself were talking about other matters. I did not see it to read. I saw a paper in the hands of Dutra, which he was reading.

The only thing that took place is, that I asked Dutra what he was reading; he told me that it was the title for the "Punta de Lobos" near San Francisco.

I did not tell him where the land was situated, because I did not know where the land lies. (No conasco el terreno.) I did not hear Soto tell Dutra where the land was situated. I was hidden in Dutra's house about 2 or 3 days. I heard of the taking of Monterey at San Juan, and I left for Monterey and hid myself in Dutra's house, because I wished to speak to my wife. I knew Benito Diaz a long time before. I am certain that it was in the month of July, for it was a few days after the 4th of July, which 4th was the feast day of "Refugio," and the Mexicans celebrated it. The Americans celebrated the same day by firing guns, which I heard at San Juan. I never had any conversation with Diaz concerning my giving my testimony in this case. I have had no conversation with any persons concerning the testimony I was to give in this case. I remember these facts well. I never spoke to Dutra about it.

GABRIEL DE LA TORRE.

Sworn to and subscribed before me May 13th, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Deposition of Bernardino Soto.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEPH C. PALMER et als.

SAN FRANCISCO, *May 14th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Bernardino Soto, a witness produced on behalf of the claimants in case No. 394, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 515 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by J. Edgar Grymes, a sworn interpreter.

Present, W. Blanding, U. S. dist. att'y, and A. C. Whitcomb, for claimants.

Questions by claimants' counsel.

Question. What is your name, age, and place of residence?

Ans. My name is Bernardino Soto, 33 years old, and I reside in Monterey county.

I have seen the original title of the "Punta de Lobos;" I saw it 2 or 3 days before the taking of Monterey, which was the 7th day of July, 1846.

I saw it in the house of Benito Diaz in Monterey. The manner that I saw it was, that Benito Diaz, his family, my father and myself were taking tea at the house of Diaz, when Don Antonio Osio came in the house with a letter, and handed it to Don Benito Diaz. The letter was sent to him by Celis, and after handing it to Diaz, Osio left, and Diaz opened it. Diaz read the contents, and he said it was the title for "Punta de Lobos," and Diaz appeared to be much pleased in receiving it. Two or three days after the taking of Monterey, I was in the house of Manuel Dutra, with Don Gabriel de la Torre, when Mr. Diaz came in and asked Dutra to lend him some money. Then Dutra asked him what security he

had, when Diaz took out of his pocket a paper; then Dutra gave him money; I do not know the quantity; then Mr. Diaz left. When Mr. Diaz left, Mr. Dutra began to read the paper; he asked me whether I knew the tract of land called "Punta de Lobos," and I told him that I did know it.

I saw the tract of land called "Punta de Lobos" in 1844. I was living in San Francisco in the latter part of 1844, also in 1845 and 1846. I do not mean to say that I was actually here all that time, for I paid visits to Monterey and other places. Benito Diaz had a little garden in the vicinity of the ruins of the Presidio. I do not know whether it was on that tract of land. Benito Diaz composed a house to live in out of the ruins of the Presidio, and lived in it. In the early part of 1846, the Presidio and the castle were in ruins; there was nobody in charge of the fort and ruins, and there were no soldiers there. Neither in 1845 or 1846 did I see any soldiers there or anybody in charge. There were no limits defined in 1846 (except the ruins) of the "Presidio" and the "Castillo." Benito Diaz took away wood and tiles from the ruins of the Presidio and the Castillo. He was ordered either by the governor or general of this place to take wood and tiles from those places to build a custom-house. I do not mean to say the general or governor of this place—I mean the commandante general who resided in Monterey. He also had permission to take the wood and tiles he wanted to build himself a house in Yerba Buena. Benito Diaz lived in his house at Yerba Buena in 1845 and 1846. I do not remember the exact date that Benito Diaz lived in his house behind the Presidio; but I believe that it was in the year 1844. I do not remember when the house of Diaz was finished in Yerba Buena, but I saw it when it was finished. I cannot remember if Diaz in his house at the Presidio in the early part of 1845. I am the brother-in-law of Benito Diaz.

Cross-examined.

It was Governor Micheltorena who gave Diaz permission to take the wood and tiles he wished to build his house with. I am not certain if it was in 1844 or 1845; I have a bad memory as to dates.

I was not present when the governor gave Diaz permission to take wood and tiles. The way that I know that Diaz had permission to take wood and tiles is, that my father and myself had charge to convey it here, and I was particular in asking Diaz if he had permission, which he said he had.

I have been in the house of Diaz behind the Presidio. The house was built by Diaz's Indians from the ruins of an old house. I believe that the house was the ruins of a house belonging to the Presidio. I do not know if Diaz had permission from the governor to live in that house. Diaz did actually live there, because I saw him living there. His family lived there also. I do not remember

of having seen any one else living there, except Diaz, his family and servants.

I do not exactly remember the time that Diaz lived there. When I was there, I saw no other persons living there, except Diaz, his family and servants.

I do not remember what year it was that Benito Diaz built the house back of the Presidio.

I have never seen any soldiers either at the "Presidio," or at the "Castillo."

The earliest time I remember of the Presidio or the Castillo was in 1844, I think.

There were some old cannons at the Castillo in 1845 and 1846. They were worthless old cannons. These cannons were completely ruined. There were, more or less, 8 or 10 cannons there. Some of them were mounted, and some not.

I mean to say by limits, that there were no marks to define the limits exactly of the Presidio and the Castillo. I do not know the boundaries of "Punta de Lobos." I know where the tract of land of "Punta de Lobos" lies. I knew the land in 1844. The way that I remember it was 2 or 3 days before the taking of Monterey that I saw this title is, that I and Diaz were sent from Santa Clara to get provisions and effects to Monterey for the troops; also, that it was on the 4th of July, which day is a great feast day. I left Santa Clara on the 4th of July in the morning, and arrived the same day at Monterey in the evening, and it was either one day or two afterwards that I saw the title. The reason that I recollect it so well is, that I was taking tea with Don Benito Diaz and family; when Osio had delivered the letter and had left, Benito Diaz opened the letter, and took out and read the title for Punta de Lobos, and I heard it read. It was Celes who sent the letter. I saw no letter accompanying the title. I mean by a letter that it was an envelope in which the title was enclosed.

I did not see or hear of any letter from Celes at that time. The title was signed by Pio Pico, and by Matias Moreno. I saw no other signature. I did not see a seal on it, and did not look to see if there was a seal or not. It was a formal title. I saw it again at the house of Manuel Dutra. I believe that it was the same paper that I saw in Diaz' house, for it contained the title of "Punta de Lobos." After Diaz had left the house of Dutra, the latter asked me if I knew where the tract of land of "Punta de Lobos" was situated, and I explained to him where it was situated, close to San Francisco. This conversation took place after the taking of Monterey by the Americans, either on the 8th, 9th, or 10th of July, 1846. I only arrived here yesterday evening. I have had no chance to have many conversations; the only thing Diaz asked me last evening was, if I remembered when Osio had delivered him the title. I answered that I did recollect it. Diaz did not tell me the date. The only thing Diaz asked me was, whether I

remembered when Osio delivered him the letter; that was all that took place. I have not been told about anything of what the other parties testified in this case.

I do not know of any persons having given their testimony in this case.

No one has told me of the persons who testified in this case. I have not had any conversations with either Dutra, De la Torre, or the Arenases concerning this case.

BERNARDINO SOTO.

Sworn to and subscribed before me this 14th day of May, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Deposition of J. L. Luco.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
J. C. PALMER et als.

SAN FRANCISCO, *May 15th*, 1857.

On this day, before John B. Williams, by consent of parties, came José Leandro Luco, a witness produced on behalf of the claimants in case No. 394, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 515 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by T. B. Cunningham, an interpreter; jurat waived.

Present, Howard & Goold for claimants, and U. S. attorney.

Answers to questions by Mr. Goold for claimants.

My name is José Leandro Luco, 34 years of age, and have resided in Solano county 5 years; am a dealer in stock. I know Vicente Perfecto Gomez; I heard him speak of the title to "Punta de Lobos" claimed in this case, 10 or 12 days ago at the California hotel. In a conversation about land titles generally, and in particular about the Potrero grant, I asked Gomez if he had given his evidence in this case. He said that he had never given any testimony in this case; that he knew nothing about the case. I know Gomez's reputation for truth and veracity; it is bad in

everything relating to land titles. Would not believe Gomez on oath in matters relating to land titles.

Cross-examined.

For two or three years past I would not believe Gomez on oath. Gomez is not a witness in my "Ulpinas" case on either side. I would not believe Gomez, because I once saw General Castro kick him on the plaza, some two or three years since, because he had testified falsely in some land cases. Would not believe him, also, because I have heard so many people speak against him. I would believe Gomez on oath on other subjects than land titles. Other people would not believe Gomez because of the treatment he received from Castro. He had become a laughing-stock from the lies he had told about land cases, and had been detected in. Previous to the time of the conversation concerning the "Punta de Lobos," I did not care to talk with Gomez about land titles, as I had no confidence in what he said. I was looking at the newspapers one morning about that time, and called Luis Arenas' attention to the evidence given by Gomez in the Potrero case. Arenas observed that Gomez was all lies; that Gomez had also testified in the "Punta de Lobos" case that he, Don Luis Arenas and Cayetano, his son, were present at the making of a false paper in the Punta de Lobos case, whereas neither Don Luis nor Cayetano had ever known Gomez until within a few months past, not even by sight. It was on account of this conversation that I spoke to Gomez about the Punta de Lobos title, and whether he had given such evidence.

Gomez said that he had given his evidence in the Potrero case, but not in the "Punta de Lobos" case; Gomez said that he had never given his evidence respecting the Punta de Lobos title; I suppose that Gomez was talking of evidence given in the district court, as the land commission had expired.

Ques. Can you repeat the very words that Gomez used in this conversation?

Ans. It is impossible for me to recollect the exact words Gomez used. The substance was this: that he had never given any evidence on the subject of the Punta de Lobos title.

Ques. Were you and Gomez talking at that time as to evidence given in the district court?

Ans. We were.

Ques. Is Gomez in the city at present?

Ans. No; he left in the last boat for San Diego, about ten days ago. He has gone to Santa Tomas, Lower Cal'a. He went away on charity. The people at the California hotel made up a purse for him to pay his expenses. The owners of the hotel proposed to the boarders to help him off, on account of the bad odor he was in from the testimony which he had given in land cases.

Direct resumed.

I understood Gomez to mean the district court in speaking of giving testimony. Gomez said that he did not give any testimony before the district court in the Punta de Lobos case. He said he had never given his testimony, and knew nothing about the subject of the "Punta de Lobos" case.

JOSE LEANDRO LUCO.

I waive commissioner and jurat of witness and interpreter.

WM. BLANDING,
Dist. Attorney.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Deposition of Juan M. Luco.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEPH C. PALMER et als.

SAN FRANCISCO, *May 18th*, 1857.

On this day, before John B. Williams, by consent of parties, came Juan M. Luco, a witness produced on behalf of the claimants in case No. 394, being an appeal from the board of land commissioners to ascertain and settle the private land claims in the State of California, in case No. 515 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—jurat waived.

Present, Wm. Blanding, esq., U. S. dist. att'y, and E. L. Goold, for claimants.

Answers to questions by claimants' attorney.

My name is Juan M. Luco, my age 36, and my residence Solano county.

I know Vicente Prefecto Gomez. I had a conversation with him respecting the "Punta de Lobos" case, about a month ago, in this city, at the California hotel. Luis Arenas, the old man, and his son were speaking with me. I asked them what they came here for. They said they came to give testimony in the "Punta de Lobos" case, because Gomez had before testified against the case, and they said that Gomez testified the grant was made in their presence, or before them. I asked Arenas who owned that grant. They said they did not know. I asked them who called

them here. They said Santiago Harbin, who was a friend of theirs. They said that such a thing had never been, and in consequence they had come to give their testimony. That evening or next day I saw Gomez at the hotel, and I asked him about that. I told him, in substance, what the Arenases had told me. He said he never did such a thing. He said everything had been charged to him since he gave the testimony in the Potrero case. Gomez said he thought Benito Diaz was the one who had given that testimony. I think that Gomez said that he did not know anything about the Point Lobos case, but I cannot say this positively. I am positive that he said to me two or three times that he never gave any testimony against the Point Lobos claim.

Cross-examined.

Arenas and myself were talking of the evidence given in the district court. Nothing was said between Gomez and myself about any court. I asked Gomez if he had ever given any testimony against the Point Lobos claim. He said he never did. Gomez said, "I think Benito Diaz is the one who gave testimony against that grant, and now it is charged to me." I know Gomez. I do'nt know much about his character for veracity. Some talk in his favor, and some against him.

JUAN M. LUCO.

Commissioner and jurat waived.

WM. BLANDING, *Dist. att'y.*

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Deposition of T. A. Mudge.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEPH C. PALMER et als.

SAN FRANCISCO, *June 5th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to admister oaths, &c., &c., came T. A. Mudge and Frederick Billings, witnesses produced on behalf of the claimants, in case No. 394, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 515 on the docket of the said board of commissioners, and were duly sworn, and testified as follows.

Present, Wm. Blanding, esq'r, U. S. dist. attorney, and A. C. Whitcomb, for claimants.

Questions by counsel for claimants.

Ques. What is your name, age, and residence?

Ans. My name is T. A. Mudge, 32 years old, and I reside in San Francisco.

Ques. Do you know Thos. O. Larkin, William M. Stewart, Dexter R. Wright, Elisha Kingsbury, and J. E. de la Montagnia?

Ans. I do.

Look upon documents purporting to be an original deed from Thomas O. Larkin and Rachel, his wife, to Dexter R. Wright, and deed from Dexter R. Wright, by his attorney in fact, the said Elisha Kingsbury, to Bethuel Phelps, which are now shown to you, and certified copies of which are hereunto annexed, marked "Exhibit A" and "Exhibit B," and state whether the said signatures appearing thereon are genuine, and where those persons, as far as you know, now live.

Ans. I know those signatures to be those of the parties. I have often seen them write and sign their names. Wm. M. Stewart is now a resident of Washington city. Messrs. de la Montagnie and Kingsbury are residents of this city, but I am informed that they are now absent. Thomas O. Larkin resides here.

T. A. MUDGE.

Sworn to and subscribed this 5th day of June, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Deposition of Frederick Billings.

Frederick Billings, being duly sworn, deposes and says, that he knows Thomas O. Larkin, and his wife, Rachel Larkin, Wm. M. Stewart, J. M. Jones, and Dexter R. Wright, and that the signatures of those persons on the document now shown him, and a certified copy of which is now hereto annexed, marked "exhibit A," are respectively their genuine signatures, and the said Thos. O. Larkin and Rachael Larkin appeared before him as commissioner of deeds, and acknowledged to him that they executed the same as their own free act and deed, as by him certified in the certificate thereunto attached.

That the said Wm. M. Stewart resides in the city of Washington, the said Dexter R. Wright in the State of Connecticut, and the said J. M. Jones is now dead.

FREDERICK BILLINGS.

Sworn to before me this 5th day of June, 1857.

J. EDGAR GRYMES,
Special Commissioner.

"*Exhibit A.*"

Thomas O. Larkin and wife to Dexter R. Wright.

This deed, made and entered into in the town of Monterey, Territory of California, on this nineteenth day of September, anno Domini eighteen hundred and forty-nine, by and between Thomas O. Larkin and Rachel, his wife, parties of the first part, and Dexter R. Wright, of the town of San Francisco, party of the second part, witnesseth, that the said Thomas O. Larkin and Rachael, his wife, for and in consideration of the sum of fifty thousand dollars to them in hand paid by the said Dexter R. Wright, the receipt whereof is hereby acknowledged and confessed, do hereby convey, remise, release, and forever quit-claim unto the said Dexter R. Wright, and to his heirs and assigns, forever, all their right, title, interest, estate, claim, and demand, both at law and in equity, and as well in possession as in expectancy of, in, and to all that certain tract or parcel of land situate, lying, and being at the entrance of the bay of San Francisco, known by the name of "Punta de Lobos;" the said land containing an area of two square leagues, (dos sitios de ganado mayor,) a little more or less, and comprehended between the lagoon of the high hill and the Punta de Lobos, all of which will more particularly and at large appear, reference being had to the accompanying instrument, marked A, the same being a true copy of the grant from Pico Pico, governor of California, to Benito Diaz, together with the deed from Benito Diaz to Thomas O. Larkin; to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, unto the said Dexter R. Wright, his heirs and assigns, to his and their own proper use and behoof forever, except one hundred yards square in said tract deeded to E. Ward Pell, by deed dated the sixth day November, 1847, on which said square said E. W. Pell now has his place of residence.

In witness whereof, the said Thomas O. Larkin and Rachel, his wife, in presence of the assisting witnesses, have hereunto set their hands and seals the day and year first aforesaid.

THOMAS O. LARKIN, [SEAL.]
RACHAEL LARKIN, [SEAL.]

Witness—
W. M. STEWART,
J. M. JONES.

TERRITORY OF CALIFORNIA,
District of San Francisco.

On this fifth day of November, the year eighteen hundred and forty-nine, personally appeared the said Thomas O. Larkin and the said Rachel Larkin, the signers and sealers of the foregoing

instrument, and each acknowledged the same to be their free act and deed for the purposes therein mentioned.

Before me, FREDERICK BILLINGS,
Commissioner of Deed in said District.

Recorded in the alcalde's office, in book "E" of deeds, pages 152, 153, Nov'r 7th, 1849, at 5 o'clock p. m.

E. GOULD BUFFUM,
Recording Clerk.

A true copy of an orignal recorded at request of B. Phelps, May 9, 1857, at 4½ o'clock p. m.

F. D. KOHLER,
County Recorder.
Pr. JOHN AMES, *Deputy.*

COUNTY OF SAN FRANCISCO,
County Recorder's Office.

I do hereby certify that the foregoing is a full, true, and correct copy of record deposited and remaining in this office, as will appear by reference to liber 66 of deeds, page 365.

[SEAL.] Witness my hand and official seal this 13th day of May, A. D. 1857.

F. D. KOHLER,
County Recorder.
Pr. JOHN AMES, *Deputy.*

"B."

Dexter R. Wright to Elisha Kingsbury.

Know all men by these presents, that I, Dexter R. Wright, of San Francisco, State of California, have made, constituted, and appointed, and do by these presents make, constitute, and appoint Elisha Kingsbury, of said San Francisco, my true, sufficient, and lawful attorney, for me and in my name and on my behalf, to ask, demand, recover, and receive all and any sum or sums of money, debts, dues, merchandise, or effects due, payable, coming, or belonging, or which may at any time be due, payable, coming, or belonging unto me from any person or persons whatsoever; to sell all or any part of such goods, merchandise, and effects which may come to his possession or knowledge, on such credit and for such prices as he may deem meet; to make and execute any note or notes of hand, bond or bonds, or other instruments or contracts in my name and on my account, which he may deem meet or expedient; to sell, barter, exchange, or dispose of any real estate of which I am now seized or possessed in fee simple, or for any less estate, to any person or persons for any price and in any manner what-

soever, and for these purposes to execute and acknowledge any deed or deeds, or other assurance or assurances, with general covenants or warranty, against all persons, or any other covenants whatsoever, as he may deem expedient; to purchase any real estate on my account, in fee simple or otherwise, at any prices or exchange whatsoever, and for these purposes to receive, confirm, make, and execute any contracts, deeds, conveyances, or other instruments whatsoever; to settle and adjust all partnership accounts and demands, and all other accounts and demands now subsisting or which may hereafter subsist between me and any other person or persons whatsoever, and to submit and decide the same by and to arbitration; to compound for any debts, dues, or demands owing or which may hereafter be owing to me, and to take less than the whole, or otherwise to agree for the same in such manner and in such terms as he in his decretion may deem proper, and for all and any of those purposes to make and execute and release compromises, compositions, agreements or contracts, by deed or otherwise, in his opinion necessary and expedient in the premises; to pay and discharge all debts and demands due and payable from me unto any person or persons whatsoever; to enter into any lands or other real estate to which I am or may be entitled, and recover the possession thereof, and damages for any injury done thereto; to commence and prosecute unto final judgment and execution any suit or suits, action or actions, real, personal, or mixed, which he shall deem proper for the recovery, possession, or enjoyment of any matter or thing which is or which may hereafter be due, payable, owing, belonging, accruing, or appertaining to me, for or by reason of the premises, or any part thereof; and in any such suits or actions for me, to appear and plead before any courts or tribunals having jurisdiction thereof, and all stipulations, recognizances, and other requisites in any suits or actions to allow and establish; to determine the same suits or actions, and any question arising from the same, by arbitration or otherwise, compromise; and of all receipts and recoveries in the premises, due acquittances and discharges to execute and deliver, and generally to do and perform all matters and things, transact all business, make, execute, and acknowledge all contracts, orders, deeds, writings, assurances, and instruments which may be requisite or proper to effectuate all or any of the premises, or any other matter or thing appertaining or belonging to me, with the same powers and to all intents and purposes with the same validity as I could if personally present; hereby giving and granting unto my said attorney full power to substitute one or more attorney or attorneys under him, my said attorney, in or concerning the premises or any part thereof, and the same at his pleasure to revoke; and hereby ratifying and confirming whatsoever my said attorney or his substitute or substitutes shall and may do by virtue hereof in the premises.

In witness whereof, I have hereto set my hand and seal this

fifteenth day of April, A. D. eighteen hundred and fifty-one, (1851.)

DEXTER R. WRIGHT, [SEAL.]

Witness—
J. HOLKINS,
A. WILLIAMS.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this fifteenth day of April, A. D. 1851, before me, Andrew Williams, a notary public in and for said county of San Francisco, personally appeared Dexter R. Wright, known to me to be the person described in and who executed the annexed instrument, and who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto affixed my official seal and subscribed my name the day and year first above written.

A. WILLIAMS, [SEAL.]
Notary Public.

The preceding is a true copy of the original recorded at the request of E. Kingsbury, July 9th, 1851, at 10½ o'c. a. m.

JOHN A. McGLYNN,
County Recorder.

COUNTY OF SAN FRANCISCO,
County Recorder's Office.

I do hereby certify that the foregoing is a full, true, and correct copy of record deposited and remaining in this office, as will appear by reference to liber No. 1 (one) of powers of attorney, page 404.

[SEAL.] Witness my hand and official seal this 1st day of May, A. D. 1857.

F. D. KOHLER,
County Recorder.
Pr. JOHN AMES, *Deputy.*

"*Exhibit B.*"

This indenture, made and entered into this seventeenth day of May, A. D. one thousand eight hundred and fifty-two, between Dexter R. Wright, of the town of Meridew, State of Connecticut, acting by his attorney in fact, Elisha Kingsbury, of the city and county of San Francisco, State of California, party of the first part, and Bethuel Phelps, of said city and county, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of

the sum of thirty-five thousand dollars, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, hath granted, released, and quit-claimed, and by these presents doth grant, release, and quit-claim, unto the said party of the second part, his heirs and assigns, forever, all the right, title, and interest of the said party of the first part, of, in, and to all that certain tract, piece, or parcel of land situated, lying, and being in said city and county, and known and described as the rancho "Punta de Lobos," containing two square leagues of land, a little more or less, at the entrance of the bay of San Francisco, bordering on the northerly side on the said bay of San Francisco, and on the westerly side on the Pacific ocean, and being the same tract of land granted by Pio Pico, Governor of the Californias, to Benito Diaz, by grant bearing date the 25th day of June, A. D. 1846, and by said Benito Diaz and wife transferred to Thomas O. Larkin, by deed bearing date the nineteenth day of September, A. D. 1846, and recorded in the office of the county recorder of the county of San Francisco, in liber 49 of deeds, page 598; to which said grant, with the map and papers relating thereto, now forming part of the archives of the office of the surveyor general of the United States for the State of California—reference is here made for a further and more particular description of the said tract of land,—together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, with the rents, issues, and profits thereof, whether now due and owing, or to become due; to have and to hold the same unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said party of the first part, acting by his said attorney in fact, hath hereunto set his hand and seal the day and year first above written.

(Signed) DEXTER R. WRIGHT, [L. S.]
By his attorney in fact: E. KINGSBURY.

Signed, sealed, and delivered in presence of—
(Signed) J. E. DE LA MONTAGNIE.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this sixteenth day of May, one thousand eight hundred and fifty-seven, personally appeared before me, a notary public in and for the said county, Elisha Kingsbury, personally known to me to be the same person described in and who executed, by power of attorney recorded in the office of the county recorder, of the county of San Francisco, in liber No. one (1) of Powers of Attorney, page 404, the foregoing conveyance, as the attorney in fact of Dexter Wright, named in said conveyance as a party thereto, and therein described as the party executing the same by his attorney; and the

said Elisha Kingsbury acknowledged to me that he executed the same freely and voluntarily, as and for the act and deed of the said Dexter R. Wright, and for the uses and purposes therein mentioned.

[SEAL.] Witness my hand and official seal, this 16th day of May, A. D. 1857.

(Signed) F. J. THIBAULT,
Notary Public.

STATE OF CALIFORNIA,
County of San Francisco, ss:

I hereby certify that the foregoing is an exact and true copy of the original deed and acknowledgment.

[SEAL.] In witness whereof, I hereunto set my hand and official seal this 19th day of May, A. D. 1857.

W. F. SWASEY,
Notary Public.

District court of the United States, in and for the northern district of California.

THE UNITED STATES, appellees,
vs.
JOSEPH C. PALMER, BETHUEL PHELPS, et als., claimants and appellants.
} Case No. 394, for rancho "Punta de Lobos."

It is hereby stipulated and agreed that the foregoing certified copies of instruments, marked "A," "B," "C," and attached to the depositions of T. A. Mudge and Frederick Billings, this day taken in the above-entitled cause, may stand in the place of their originals, and be used and read in evidence in and upon the trial and hearing of the cause without further proof.

WM. BLANDING,
Dist. Attorney.
HOWARD & GOOLD,
For Claimants.

San Francisco, June 5th, 1857.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Espediente.

Sello cuatro Dos Reales.

Habelitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para los años

de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

EXSMO. SOR. GOBERNADOR:

[SEAL.] Benito Diaz, natural de Californias y vecino de S. Franco., anto V. E. como mesor haya lugar y con el devido respecto, hace presente: que teniendo algunas cabezas de ganado mayor, y no teniendo un citio adonde ponerlas para su aumento; y hallandose valdio un parage en la jurisdiccion de S. Francisco, conocido con el nombre de la Punta de Lobos, colindante al norte con el mar que corre al puerto de Sn. Fran'co, al sur con el sexx'o que esta a la espalda de la micion de S. Fran'co, conocido con el nombre del sexxo de la laguna honda, al viente con la loma alta, y al poinente con la Punta de Lobos, que comprendora poco mas ó menos dos citios de ganado mayor advestundo que las ruinas del Precidio de S. Francisco y el Castillo que se hayan dentro del citio que daran esentos de la peticion a no ser que el Gobierno quiera agraciar me con dichas ruinas, comprometiendome si se efectua a fabricar una casa en el puerto de S. Fran'co para comandancia militar que tenga veinte y cinco varas de largo y seis de ancho.

Por tanto A. V. E. suplico tome en consideracion mi solicitud concediendome el terreno que pretendo, lo que espero de la acreditada vondad de V. E. en lo que recibira gracia; govando lo necesario, &c., &c.

YERBA BUENA, *Abril* 3, *de* 1845.

BENITO DIAZ.

ANG., *Mayo* 24, *de* 1845.

Pasé a informe del juez respectivo, y se espera qe. el Sor. Comandante Militar digo lo qe. tenga pr. conveniente, pa. qe. en vista de todo vuelvo qe. sea al gob'o este resuelva lo q.e consenga a la parte qe. solicita.

PICO.

En visto del superior decreto que antece de pobre informacion, del terreno que el solicitante obtiene los requisitos necesairos, conforme la ley de la materia pero que el punto que actualmente ocupo (el punto) militar no hodra dar una informacion por no saber sus ejidos.

F. DE LA CRUZ SANCHES.

PUEBLO DE SN. F'CO., *Agoste* 16, *de* 1845.

Comandancia Atlar de San Fran'co, Oct'e 18, de 1845:

De conformidad con el sup'r decreto qe. antecede espedido por el Sor. Gobernador Interimo de este Departam'to, en 24 de Mayo

del presente año, debo decir que hayandose valdio el solicita cres se le puede conceder no comprendiendo, en la concesion los dos puntos militares del Presidio y Castillo qe. se hallan comprendidos en la solicitud.

F'CO SANCHEZ.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, by virtue of the power vested in me by law, do hereby certify, that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two inclusive, exhibit a true and accurate copy of a certain document now on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of [L. S.] San Francisco, this ninth day of May, 1857.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the surveyor general, (California,) and any copy or extract from the plats, field notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Translation of Espediente.

Fourth seal.—Two reals.

Qualified provisionally by the custom-house of the port of Monterey, in the department of the Californias, for the years of 1844 and 1845.

PABLO DE LA GUERRA.

MICHELTORENA.

[CUSTOM-HOUSE SEAL.]

TO HIS EXCELLENCY THE GOVERNOR:

Benito Diaz, native of the Californias, and resident of San Francisco, before your excellency as the most proper authority, and with due respect, here presents: that having many head of horned cattle, and not having a place to put them for the increase of the same, and finding a vacant place within the jurisdiction of San Francisco, known by the name of the "Punta de Lobos," (Wolve's Point,) bounded on the north by the sea which flows to the port of San Francisco; on the south with the serro (hill) in the rear of the Mission, known by the name of the "Serro de la Laguna Honda," (Hill of the Deep Laguna;") on the east with the "Loma Alta," (High Hill,) and on the west by "la Punta de Lobos," (Wolve's Point,) which will comprehend two leagues, (dos sitios de ganado mayor,) more or less; observing that the ruins of the Presidio of San Francisco and the castle, that are within the tract, may be exempt from the request, if the government is not willing to favor me with said ruins; I promising, if that be done, to erect a house in the port of San Francisco for the military command, which shall have twenty-five varas length by six in breadth.

Wherefore I pray that your excellency will take into consideration my petition, granting me the land I solicit, which I hope of the well-known bounty of your excellency, for which you will receive thanks. Making the necessary oath, &c., &c.

YERBA BUENA, *April* 3*d*, 1845.

BENITO DIAZ.

ANGELES, *May* 24, 1845.

Pass this for information to the respective judge, and await the report of the military commander upon the matter; and upon a review of the whole, upon the returns to the government, it will resolve what may be proper toward the petitioner.

PICO.

In view of the foregoing superior decree concerning information about the land which the petitioner asks for, I declare that it is vacant, and that said petitioner has the necessary requisites according to the law of the matter; but as to the spot (punta) that the military point actually occupies, I am not able to give any information, not knowing its lands.

PUEBLO OF SAN FRANCISCO, *August* 16*th*, 1845.

JE. DE LA C. SANCHEZ.

MILITARY COMMAND OF SAN FRANCISCO,
October 18*th*, 1845.

In conformity with the superior decree that precedes, issued by

his excellency the Governor Provisional of this Department on the 24th of May of the present year, I declare that finding vacant the land that the petitioner solicits, I think that it may be conceded to him; not comprehending in the grant the two military points of the castle and presidio that are included in the petition.

FRANCISCO SANCHEZ.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Certificate, order, and stipulation.

TERRITORY OF CALIFORNIA,
District of San Francisco.

CHIEF MAGISTRATE'S OFFICE,
Yerba Buena, October 6th, 1845.

This is to certify that Thomas O. Larkin, esq'r, for himself and as the representative of Don Benito Diaz, has presented at this office the title to the farm called "Punta de Lobos," on San Francisco bay, as described in said title, granted on the twenty-fifth day of June last; by which said title or grant to the said Benito Diaz, and transfer from said Diaz to the said Thomas O. Larkin, esq'r, he, the said Thomas O. Larkin, claims ownership of said farm and asks possession thereof, with permission to survey and occupy the land (as described in the title) at the earliest practicable moment. This is therefore to order, that in accordance with the aforesaid titles, the aforesaid Thomas O. Larkin, esq'r, can enter upon said premises and be held to be and considered in legal possession thereof, according to the terms and conditions of the original grant, the boundaries whereof to be fixed as soon as a competent surveyor can be obtained to survey the same.

WASH'N A. BARTLETT,
Chief Magistrate.

District Court of the United States in and for the Northern District of California.

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER, BETHUEL PHELPS, et als., claimants and appellants.	Case No. 394, for rancho "Punta de Lobos."

It is hereby stipulated and agreed that the above and foregoing certificate and order, in the handwriting and with the signature of Washington A. Bartlett, chief magistrate, may be used and read in evidence in and upon the hearing and trial of the above-entitled

cause in all its stages without further proof; subject to all legal exceptions.

HOWARD & GOOLD,
Atty's for Claimant,
WM. BLANDING,
Dist. Att'y.

SAN FRANCISCO, *May 30th*, 1857.

Endorsed: Filed June 6th, 1857. John A. Monroe, clerk. W. H. Chevers, deputy.

Order granting District Attorney further time.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday the fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty-seven:

Present, the honorable Ogden Hoffman, district judge—

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER et als., claimants and appellants. } Case No. 394, for "Punta de Lobos."

On motion of William Blanding, esq'r, United States district attorney, (the claimant's counsel opposing,) it is hereby ordered by the court, that the said district attorney be granted six weeks' further time in the above-entitled cause to take proofs therein.

Endorsed: Filed June 15th, 1857. John A. Monroe, clerk.

Order fixing time for trial.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of Francisco, on Tuesday, the fourth day of August, in the year of our Lord one thousand eight hundred and fifty-seven—

Present, the honorable Ogden Hoffman, district judge:

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER et als., claimants and appellants. } Case No. 394.

On motion of A. C. Whitcomb, of counsel for claimants, it is hereby ordered by the court that the above-entitled cause be set for hearing on Monday next, August 10th, 1857, at the opening of the court on that day, unless the appellees, on or before then, show

cause for a continuance, by affidavits stating materiality of the facts intended to be proved, the names of the witnesses, the time within which they can be produced, and the reasons for their not having heretofore been examined.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed August 4th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Opinion on motion to set case for a hearing, by the Hon. Ogden Hoffman, U. S. dist. judge.

THE UNITED STATES, appellees, ads.
J. C. PALMER et als., appellants.

A motion is made to set this case for a hearing at an early day, which is opposed by the district attorney.

The transcript was filed in this court on the 30th January, 1856.

The cause was placed on the calendar, but was not reached until April 13, 1857, when it was set for a hearing on the 6th May ensuing.

On the 6th May the court was not in session, and the rule requiring the examination in court of witnesses in cases where fraud was alleged having been suspended, depositions were taken on various days up to May 15th, when the claimants' att'y gave notice to the district attorney of his readiness to submit the case. On Monday, May 18th, the district attorney obtained from the court one week further time to take testimony.

On Monday, the 25th May, the district attorney, desiring a further postponement of the cause, a week's time was granted by the court.

On Monday, June 1st, the claimants' counsel moved the hearing of the cause, but having, from a misconception of the practice, omitted to prove certain mesme conveyances before the commissioners, tho' the originals, duly acknowledged, were produced in court, the cause was again, at the instance of the district attorney, postponed for two weeks.

On the 15th June the claimants' counsel again moved the hearing of the cause. This motion was opposed by the district attorney. No affidavit, however, was presented by him, nor statement of any testimony he expected to procure. No names of witnesses were given; but the importance of the case was referred to, and the hope expressed that some testimony to establish the fraud suggested might be obtained in the course of a few weeks.

The court, desirous of affording every facility for the ascertainment of the real merits of the case, again postponed the cause, and

as the judge was about to be absent from the city, six weeks was allowed, and the cause fixed for July 27th.

On the 27th July the hearing was again moved by the claimants' counsel. A further postponement was asked by the district attorney. On being inquired of by the court, he declined to specify any time at which he would be ready to submit the case, but intimated that he required a delay of some months. He did not give the court to understand that he was in possession of any facts susceptible of proof, or that he knew of any witnesses by whom the case on the part of the United States could be made out. He contended, however, that the cause had lost its place on the calendar, and should be postponed until regularly called in its order; and he expressed the hope that by that time he would be able to procure some testimony on the part of the government.

No evidence, either oral or documentary, has been taken or filed on the part of the United States since the cause has been pending in this court, or within the last two years.

It will not be disputed that the intention of Congress was to secure the speedy settlement of land claims in this State. It was accordingly provided by section 9 of the act of 1851, that after the service of the answer to the petition for a review of the decision of the board, the cause should stand for trial at the next term of the court thereafter, unless on cause shown the same should be continued by the court.

I think the claimants have, under the circumstances of this case, an unquestionable right to have the case heard and disposed of.

I shall therefore set it for hearing on Monday next, the 10th day of August, with liberty, however, to the district attorney on or before that day to show cause for a continuance by affidavit stating the facts intended to be proved, the names of the witnesses, the time within which they can be produced, and the reasons for their not having been heretofore examined.

I am aware that, in suffering the cause to be again postponed, even on the showing indicated, I may seem to be allowing too great indulgence. But the large number of these cases, which renders it impossible for the district attorney to devote his exclusive attention to any one, the difficulty of procuring information as to the facts, the importance of this particular case, and the circumstance that the law officer of the government has but recently entered upon his office—all these considerations have induced me to give to that officer all the opportunities for the preparation of these cases which, without disregarding the rights of the claimants, I can extend to him.

Endorsed: Filed August 4th, 1857. John A. Monroe, clerk.

Order granting dist. att'y further time, and fixing time of trial.

At a stated term of the district court of the United States of

America for the northern district of California, held at the court room in the city of San Francisco, on Monday, the 10th day of August, in the year of our Lord one thousand eight hundred and fifty-seven:

Present, the honorable Ogden Hoffman, dist. judge—

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER, et als., claimants and appellants.	Case No. 394, for "Punta de Lobos."

On motion of P. Della Torre, esq., United States district attorney—the claimants' counsel opposing—it is hereby ordered by the court that four weeks' further time in the above-entitled cause be granted to the said district attorney, and that the cause be set for hearing on Monday, September 7th, 1857, at the opening of the court on that day.

Endorsed: Filed August 10th, 1857. John A. Monroe, clerk.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco, on Monday, the 14th day of September, in the year of our Lord one thousand eight hundred and fifty-seven:

Present, the honorable Ogden Hoffman, district judge—

Motion.

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER et als., claimants and appellants.	Case No. 394, for "Punta de Lobos."

On this day it was moved by A. C. Whitcomb, of counsel for claimants, that the above-entitled cause be brought on for a hearing; and the motion having been opposed and argued by the United States district attorney, it was taken under advisement by the court.

Endorsed: Filed September 14th, 1857. John A. Monroe, clerk.

Opinion fixing cause for argument, delivered by hon'ble Ogden Hoffman, U. S. dist. judge.

THE UNITED STATES ads. J. C. PALMER et al.

Since the delivery of the opinion of the court on the motion

made August 3d by the counsel for the claimants, that the cause be brought to a hearing, the district attorney showed cause, on the 10th day of August, for a continuance. The showing, though not strictly within the rules usually applied to such cases, was treated by the court as sufficient, and four weeks' further time, the period asked for by the district attorney, was allowed.

Monday, September 7th, being a holiday, the court was not in session; and on last Monday, September 14th, the claimants' counsel again moved the hearing of the cause. No cause for a continuance was shown by the district attorney. He did not intimate that he expected, within any assigned period, to obtain testimony on the part of the government, nor that he was in possession of any facts susceptible of proof which might affect the case. He, however, urgently pressed upon the attention of the court that he was in daily attendance upon the circuit court, now in session, and desired that this case should be postponed until the next regular call of the docket of land cases.

He further urged that the law did not contemplate both the circuit and district courts should be in session at the same time, and that the government could not be expected to provide two officers to be in attendance upon the courts, when their holding their sessions at the same time was not contemplated by law.

As to these suggestions, it is to be observed that the act of 1855, which authorizes the circuit judge to form part of and preside over the district court when hearing land cases, requires him so to do only "when in his opinion the business of his own court will permit"—clearly implying that the legislature contemplated that both courts might be in session simultaneously; and in the fee bill of 1853 the marshal is in terms allowed a per diem for attending the circuit and district courts when they are both in session, or for attending either of said courts when but one is in session. It cannot therefore be said that simultaneous sessions of both courts are not contemplated by law.

But the exercise of the discretion of the court as to continuing this case does not depend upon technical considerations such as this. The court has already intimated to the district attorney that it would suspend for the present, while his engagements continued imperative, the regular call of the docket of land cases. This, though a great hardship to claimants, seemed unavoidable, as they could not reasonably expect the district attorney to prepare for hearing a certain number of new cases when his duties in the circuit engrossed his whole time.

But the case at bar has already been regularly called, and has been set for a hearing seven different times from May 6th. On the 15th June, six weeks further time was allowed to the district attorney. At the expiration of that period he was again allowed four weeks' further time, though the application was strenuously opposed by the claimants. And now, without any showing other than that

he is engaged in the circuit court, an indefinite postponement is asked until the next call of the calendar. This postponement is not asked because the district attorney is unable to appear and argue the cause in court; for no desire to argue the cause orally was intimated, and the general practice has been to submit these cases on written briefs. If, however, an oral argument be desired, the court will assign a day when the district attorney is not in actual attendance on the circuit court. A convenient time for filing briefs will of course be allowed. The real object of the motion is to postpone the submission, and to keep it open for further proofs. I think the claimants have a right to insist that their cause be heard, especially as no testimony whatsoever on the part of the United States has been taken since the cause has been in this court, and there seems no reason that at the expiration of a month from this date the government will be more ready to submit the case than it was a month ago.

So many cases are already before this court for determination, requiring minute and careful investigation, that it is not probable that this cause will be taken up by the court and finally disposed of before the expiration of a considerable time.

If at any time before the entry of the final decree new matter should be brought to light, or testimony, &c., newly discovered, it will of course be in the power of the district attorney to move that the cause be reopened for the purpose of hearing it.

The court has felt the utmost reluctance in refusing this application. We would have much preferred that a cause involving so great amount should be heard only when both sides themselves in readiness. But we have felt that the claimants have rights as well as the government, and that, under all the circumstances, we are not at liberty to grant the continuance moved for.

The cause must therefore be set for argument on Saturday, September 19th, at the opening of the court on that day; and if no oral argument be desired, it will be considered as submitted, with liberty to either side to file briefs.

Endorsed: Filed September 16th, 1857. John A. Monroe, clerk.

Order refusing continuance, and fixing time of trial.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco, on Wednesday, the sixteenth day of September, in the year of our Lord one thousand eight hundred and fifty-seven:

Present, the honorable Ogden Hoffman, district judge—

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER et als., claim-claimants and appellants. } Case No 394 for "Punta de Lobos."

The court having taken until this day to advise of the motion

made in this cause on the 14th instant, it is now hereby ordered by the court that the continuance be refused, and that the cause be set down for a hearing on Saturday, the 26th of September, 1857, at the opening of the court on that day.

Endorsed: Filed September 16th, 1857. John A. *Clerk.*

Order postponing hearing.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Saturday, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven:

Present, the honorable Ogden Hoffman, district judge—

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER et als., claimants and appellants.	Case No. 394, for "Punta de Lobos."

The above-entitled cause having been, on the 16th day of September, 1857, by order of the court of that date, set for a hearing and trial on this day, and there being present P. Della Torre, esq., United States district attorney, and William Blanding, esq., on the part of the United States, and E. L. Goold, esq., and A. C. Whitcomb, on the part of the claimants, the hearing of the cause was moved by the counsel for the claimants, in pursuance of said order; but it being suggested to the court, on behalf of the United States, that the court had adjourned over until Monday next, the 28th instant, the hearing of the said cause was postponed till the said 28th instant, until which day the court had been adjourned.

Endorsed: Filed September 28th, 1857. John A. Monroe, clerk.

Order submitting cause, with leave to District Attorney to file briefs.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday the twenty-eighth day of September, in the year of *of* our Lord one thousand eight hundred and fifty-seven:

Present, the honorable Ogden Hoffman, district judge—

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER et als., claimants and appellants.	Case No. 394, for "Punta de Lobos."

This cause having been brought on for a hearing this day, and

argued by the respective counsel—present for the United States P. Della Torre, esq., U. S. district attorney, and William Blanding, esq., and for the claimants E. L. Goold, esq., and A. C. Whitcomb—it is hereby ordered by the court, that this cause be submitted, with leave to the said district attorney till Saturday, October 3d, 1857, to fill briefs.

Endorsed: Filed September 28th, 1857. John A. Monroe, clerk.

Decree rejecting claim.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven:

Present, the honorable Ogden Hoffman, district judge. The honorable M. Hall McAllister, circuit judge—

THE UNITED STATES, appellees, } D. C. 394; L. C. 515.
ads.
J. C. PALMER et al., appellants. }

Decree.

This cause came on to be heard on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress, approved on the third of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision was founded, and upon the further evidence taken in this court by leave of the court; and it appearing to the court that the said transcript was duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed that the said decision be, and the same is in all things affirmed; and it is likewise ordered, adjudged, and decreed that the claim of the appellants is invalid, and that the same be and is hereby rejected.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed December 5th, 1857. John A. Monroe, clerk.

Order granting appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-

room, in the city of San Francisco, on Saturday, the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-seven:

Present, the honorable Ogden Hoffman, district judge—

THE UNITED STATES, appellees, vs. JOSEPH C. PALMER, CHARLES W. COOK, Bethuel Phelps, Dexter R. Wright, claimants and appellants.	No. 394 in said district court, and No. 515 in the land commission.

In the above-entitled cause, on the application of the attorneys for the claimants made in open court, it is hereby ordered by the court that an appeal in behalf of the said claimants from the final decision and decree of this court rendered in said cause, on this day and at the present term of the court, be and the same is hereby granted; and that a certified copy of the pleadings, orders, evidence, depositions in the said cause be sent to the Supreme Court of the United States without delay; and that the claimants give security in the sum of two hundred and fifty dollars for costs in the district and supreme courts, in case the judgment of the said district court shall be affirmed.

Endorsed: Filed December 5th, 1857. John A. Monroe, clerk.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to 98, inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, and decree filed in this office in the case entitled The United States, appellees, vs. Joseph C. Palmer et als., appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court this 19th day of December, A. D. 1857, and of the independence of the United States of America the 82d.

[SEAL]

JNO. A. MONROE, *Clk.*